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THE
CANADIAN FRANCHISE ACT,

WITH NOTES OF DECISIONS
ON THE
IMPERIAL ACTS RELATING TO REGISTRATION,
AND ON
THE PROVINCIAL FRANCHISE AND ELECTION ACTS.

WITH AN APPENDIX,
CONTAINING
THE PROVINCIAL FRANCHISES OF ONTARIO, QUEBEC, NOVA SCOTIA, NEW
BRUNSWICK, MANITOBA, BRITISH COLUMBIA, AND
PRINCE EDWARD ISLAND.

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PREFACE.

The object of this book is to provide a full summary of the law affecting all classes of cases relating to the Electoral Franchise, which are likely to arise under the Canadian Act of 1885.

The annotations aim at embodying all the leading cases which have been decided under analogous statutes in England, and in the various Provinces ; supplying such brief comments as may be useful.

References have also been made to decisions in the American Courts, where they add to the force of, and further illustrate, the English cases.

The notes of cases illustrating the meaning of the terms "residence" and "actual occupation,"—which constitute an important element in the qualification of voters,—have been made very full.

It may be found difficult in a few instances to harmonize some of the English judicial decisions referred to in the notes. The excuse of Brett, L. J. (now Lord Esher, M. R.) will perhaps explain the reason: "I can only answer that if Judges seem to talk nonsense, it is because Parliament has written nonsense : " *Bradley v. Baylis*, 8 Q. B. D. 235.

Short summaries have also been given of the Canadian Statutes relating to the Electoral Franchise since 1791 ; and of the Provincial Acts relating to Elections, and to the Property of Married Women,—affecting as they do the right of husbands to qualify and vote in respect of their wives' properties.

The provisions of the various Provincial laws relating to the qualifications of voters at Provincial Legislative Elections will be found in the Appendix.

The franchise, and the mode of exercising it, are questions of great interest and importance to all who have the right to participate in the administration of civil government. And because of that right in civil government, it has been said that the inclination of the Courts is to favor the right of suffrage. The true judicial canons may be more accurately stated thus: (1) In construing Acts regulating the franchise the rule is, not to decide in favor of the vote, but according to the intention of the Legislature, as expressed in the language used according to its plain ordinary sense. (2) In determining questions of value the leaning should be in favor of the franchise.

A writer on the law of elections has also well said:

"It is important that the provisions as to Suffrage should be carried out in their simplest and most natural sense, without the introduction of artificial or technical constructions." *McCrary on Elections*, 431.

Influenced by these views, the Editor has spared neither time nor labor, in compiling and grouping together the references and cases which illustrate them, and the salient points of this new law relating to the Canadian Franchise; so that Revising Officers and Counsel engaged in the Revision Courts—away from their libraries—may find the work a ready and reliable manual, aiding them to fulfil the statutory command: "to do justice to all parties."

T. H.

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THE ELECTORAL FRANCHISE ACT.

48 & 49 VICTORIA, CHAP. 40.

Canada.

An Act respecting the Electoral Franchise. (a)

[Assented to 20th July, 1885.]

HER Majesty, by and with the advice and consent of Preamble.
the Senate and House of Commons of Canada,
enacts as follows :

(a) Elective Franchise, or Suffrage, is the political right of the people to participate in their own government, by voting for such Public officers or Parliamentary representatives as are required for the efficient execution of the powers and functions of their government. The exercise of this right of voting is regulated by the state for the purposes of preserving the vigilance and continuity of its executive, and of perpetuating political liberty, and the protection of individual rights. The purposes therefore being public, the right of voting exists for the benefit of the whole people, and not for the benefit of the individual subject or voter. Political liberty and public rights come from the legal restraints of positive law, and not in any institutional sense from nature. And in so far as the right of suffrage partakes of the incidents of both, positive law prescribes the purposes for which the suffrage is to be exercised, and the conditions and qualifications necessary for its possession and enjoyment, and the causes for which it may be forfeited. "Suffrage is a political right which every free community reserves to the people, or grants to such number and class of persons as it deems best fitted to represent and advance the wants and interests of the whole. No state grants it to all persons, but with such limitations as the interests of all and of the nation require. When once granted it is not a vested irrevocable right, but is held at the pleasure of the power that gave it, and that power may, by a change of law, restrict as well as enlarge it." *McCrary on Elections*, 31. The theory of our political system is that the ultimate sovereignty is in the people, from whom springs all legitimate authority. In England, where the people do not debate in a collective body, but by representation, this sovereignty consists in the election of representatives: *1 Bl. Com.* 170. In the election of knights, citizens and burgesses consists

the exercise of the democratical part of our Constitution ; for in a Democracy there can be no exercise of sovereignty except by Suffrage, which is the declaration of the people's will. In all Democracies, therefore, it is of the utmost importance to regulate by whom and in what manner the suffrages are to be given: *Ibid.* Franchise and liberty are used as synonymous terms : 2 *Bl. Com.* 37. In England, prior to 1429 the Elective Franchise was more general, and more akin to Manhood Suffrage, than it has ever been since. "Every inhabitant and commoner in every county had a voice in the election of knights, whether he were a freeholder or not, or had a freehold only of one penny, sixpence, or twelvepence by the year:" *Prynne's Brev. Parl.* (1662) 187. The common law placed all elections in the hands of the people; and the right of election was restricted to those whom the law accounted free. Every elector, therefore, ought to be *liber et legalis homo*. The test of freedom was free tenure: *Hudson on Elections*, 30. The first statute regulating county elections provided "that the elections should be made at the county court by all they that be there present:" 7 *Henry IV.* c. 15. A prior statute respecting sheriffs provided that the people shall have election: 28 *Edward I.* c. 8. The persons assembled at county courts are said to have included all the people, *omnis populus*: *Cox's Ant. Parly. Elections*, 25. The return by sheriffs on many Parliamentary writs in 18 *Edw. II.* is, that "the election has been made by the assent and will of the men of the whole county:" *Palgrave's Parly. Writs*, 319. At that time no other qualification than residence was required of Parliamentary electors: 1 *Henry V.* c. 1. In 1429, the Act 8 *Henry VI.* c. 7, defining "what sort of men shall be choosers," required electors to be residents and to have a property qualification as freeholders to the value of 40s. in the county. "This statute first required the electors to have a qualification of freehold to a certain value, thereby, as some think, restoring the aristocratic spirit of the Constitution, which had been lately broke in upon; or, as other assert, making an inroad upon the liberties of the people by depriving the lower class of freeholders of a privilege they had always enjoyed before:" *Heywood on Elections*, 23. "The statute (8 *Henry VI.*) presents a strong contrast to the legislation of the preceding reigns. The policy of former Parliaments had been to secure the whole body of the county population in the free and independent exercise of their electoral rights. Several reasons are assigned in the preamble for restricting the franchise. The true grievance appears to have been, not the mere number of the lower class of electors, but that their votes were of equal weight with those of persons of gentle (*gentil*) condition:" *Cox's Ant. Parly. Elections*, 113. The provision as to residence, after having been disregarded for centuries, was repealed as "obsolete" by 14 *Geo. III.* c. 58. In boroughs the qualification of voters was not regulated by any general law until 1832, and appears to have been simply residence and the occupation of a house: *Cox's Ant. Parly. Elections*, 177. The common law right of voting in boroughs was held to belong to "inhabitant householders:" *Rogers on Elections*, 52. Elections were originally made by voices, or by holding up of hands, or such other way wherein it was easy to tell who had the majority, and yet very difficult to know the certain number of them: and I myself, in London, was elected by holding up of hands, but I could not tell how many there were that held up their hands: *Per Brooke, C. J.* (1554) in *Flouden's Comm.* 129. See p. 54, *post*.

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1. This Act may be cited as "*The Electoral Franchise* Short title.
Act." (b)

(b) The right of sending representatives to a Legislative Assembly in a colony, and the qualifications of the electors and the elected, were founded originally on the instructions given by the Crown to the Governors: *Chalmers' Opinions*, 270. The electors in some colonies were required to possess a certain landed qualification: *Clark's Colonial Law*, 39. The qualifications usually prescribed for electors in colonies established by Royal Charter were that they should be householders, or landholders, to the value of 40s. sterling: *Mills's Colonial Cons.* 201. The Imperial Act, 31 Geo. III. c. 31, which granted a Constitution to the former Provinces of Upper and Lower Canada, after providing for a Legislative Assembly in each province, prescribed one class of voters for counties: *Owners* of lands held in freehold, or in *fief*, or in *roture*, or by virtue of the Governor's certificate, of the yearly value of 40s. sterling; and two classes of voters for towns: (1) *Owners* of dwelling houses and lots, held as aforesaid, of the yearly value of £5 sterling; and (2) *Tenants*, residents of the town for twelve months before the election, who had paid a year's rent of £10 sterling (s. 20). The further qualifications, required of all to be voters, were: (a) of the full age of 21 years; and (b) a subject of the Crown by birth, naturalization, or conquest. The disqualifications were: (a) being attainted of treason or felony; or (b) being within the description of persons disqualified by Acts to be passed by the Provincial Legislatures. The disqualifications of voters prescribed by the Upper Canada Acts were: (1) Persons who had sworn allegiance to a foreign state, and had become stated residents therein (40 Geo. III. c. 3; 4 Geo. IV. c. 3). (2) Persons (a) whose deeds of land had not been registered three months before the election, or (b) who had not been in the actual possession or receipt of the rents and profits of their land for twelve months before such election (4 Geo. IV. c. 3). In 1820 a member for a University, to be established, was provided for, the electors of which, besides the qualifications required by law, were to be those entitled to vote in the Convocation of the University (60 Geo. III. or 1 Geo. IV. c. 2). In Lower Canada the disqualifications were: (a) not being in receipt of the rents and profits of his land for six months prior to the election, unless within that time the land came to him by descent or marriage (2 Geo. IV. c. 4); (b) fraudulent grantees; and (c) persons guilty of perjury (5 Geo. IV. c. 33). By the Canada Union Act, 3 & 4 Vic. c. 35 (Imp.), it was declared (s. 27) that, until otherwise provided by the Legislature of United Canada, the laws of Upper Canada, and the laws in force in Lower Canada in 1838, relating to the qualification and disqualification of voters should be continued. The United Legislature made no provision respecting the qualification of electors until 1849, when the prior Acts were consolidated in 12 Vic. c. 27, the voters being: in counties, (1) *Proprietors*, of lands held as before mentioned, of the yearly value of £2 4s. 5¹/₄d. currency (40s. sterling), in actual possession or receipt of the rents and profits thereof for six months before the election, unless the lands came to them by descent, devise, or marriage; or unless the deed of the same had been registered in Upper

Canada three months, or in Lower Canada twelve months before the election; and in towns, (1) *Proprietors* of a lot and dwelling-house of the yearly value of £5 11s. 1½d. currency (£5 sterling) over and above ground and other rents, and with similar conditions as to possession and registration as in counties; (2) *Tenants* who, for twelve months prior to the election, occupied and paid rent of a dwelling-house, or part of a dwelling-house, of the yearly value of £11 2s. 2½d. currency (£10 sterling); change of residence within the town not to disqualify. In 1853 and 1854 the franchise was defined to extend to three classes of persons—owners, tenants, or occupants of lands: in townships, of the assessed actual value of \$200, or of the assessed yearly value of \$20; and in towns, of the assessed actual value of \$300, or the assessed yearly value of \$30 (16 Vic. c. 153; 18 Vic. c. 7; 18 Vic. c. 87). In 1858 the prior Acts were repealed, and provision was made for certified lists of voters with similar qualifications to those previously defined; all of which provisions were subsequently consolidated in C. S. C. c. 6, which was in force in Ontario and Quebec at the confederation of the provinces in 1867. The franchise in Nova Scotia was at that time regulated by R. S. N. S. c. 28, the qualifications being: (1) male subject of Her Majesty; (2) of the age of 21 years; (3) not disqualified by law; (4) assessed for real estate to the value of \$150, or for personal estate, or personal and real estate, to the value of \$300; and (5) entered on the registry of voters. In New Brunswick the Act 18 Vic. c. 37, defined those qualified to vote at elections as: (1) Male persons of the age of 21 years; (2) British subjects; (3) not subject to any legal incapacity; (4) assessed for real estate to the amount of \$100, or personal property, or real and personal property, \$400, or for \$400 annual income. If there was no assessment for the parish, then the possession of the qualification was sufficient to entitle the elector to vote. By the B. N. A. Act (s. 51) and until the Parliament of Canada otherwise provided, these laws relative to the voters at elections of members of the House of Assembly or Legislative Assembly in the several provinces, and the oaths to be taken by voters, were made applicable to the elections of members of the House of Commons. Subsequently temporary Acts, adopting the Provincial Franchises for the Dominion elections, were passed—in 1871, 34 Vic. c. 20, amended by 35 Vic. c. 13; and in 1873, 36 Vic. c. 27. The Dominion Elections Act, 1874 superseded these temporary Acts, adopted the various Provincial franchises, and provided (s. 40): that all persons qualified to vote at elections for the Provincial Legislature, and no others, should be entitled to vote at elections for the House of Commons; and that all lists of voters prepared for such Provincial elections (where such lists were required to be made) should be the lists of voters for elections to the House of Commons. This Franchise Act repeals the above provisions, but (s. 9) specially adopts for Dominion Elections the Provincial franchises of British Columbia and Prince Edward Island, and prescribes for the other Provinces a franchise for eight classes of voters: (1) owners, (2) tenants, and (3) occupants of real property, (4) income voters, (5) real property owners' sons, (6) farmers' sons, (7) fishermen, and (8) Indians (except in Manitoba, British Columbia, Keewatin and North-West Territories) in possession of a distinct and improved lot of land on a reserve. The franchises in the several Provinces are as follows: *Ontario*, 48 Vic. c. 2, O., providing for nine classes of voters: (1) owners, (2) tenants,

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INTERPRETATION.

2. In this Act, unless it is otherwise expressly provided, or unless there is in the context something inconsistent with or repugnant to such construction, the following words and expressions have the meanings hereinafter assigned to them, respectively : (c)—

(3) occupants of real property, (4) income voters, (5) wage-earners, (6) householders, (7) landholders' sons, (8) enfranchised Indians, and (9) Indians non-participating in annuities. *Quebec*, 38 Vic. c. 7, Q., three classes of voters : (1) owners, (2) occupants, and (3) tenants of real estate. *Nova Scotia*, 48 Vic. c. 2, N. S., five classes of voters : persons assessed for, or possessed of, (1) real, or (2) personal property, or (3) both ; (4) tenants ; (5) sons of owners or tenants. *New Brunswick*, C. S. N. B., c. 4, four classes of voters : persons assessed in respect of (1) real, or (2) personal property, or (3) both ; and (4) annual income ; and if there be no assessment, then possession of the qualification prescribed is sufficient. *Manitoba*, C. S. M., c. 3, four classes of voters : (1) owners, (2) tenants, (3) occupants, and (4) *bona fide* householders. *British Columbia*, 39 Vic. No. 5, one class : persons resident in the Province for twelve months, except Chinamen and Indians, (38 Vic. No. 2). *Prince Edward Island*, 24 Vic. c. 34, three classes of voters : (1) freeholders, (2) occupants, and (3) statute labor voters. The Imperial Franchise Act, 48 Vic. c. 3, provides for five classes of voters in boroughs, and seven classes of voters in counties. Differences exist in the franchises of England, Scotland, and Ireland in respect of the property qualification of voters. Scotland has its own law, and Scotland and Ireland have their own Reform Acts : 1 *Law Quar. Rev.* 28. By the constitution of the United States the power to fix the qualifications of voters for Federal Elections is vested in the several States. Each State fixes for itself these qualifications, and the United States adopts the State law upon the subject. Section 2 of article 1 provides that "the electors in each State shall have the qualifications required for electors of the most numerous branch of the State Legislature :—" *McCrary on Elections*, 6.

(c) Words which are terms of art ought to be distinctly explained. Common words, therefore, ought to be used in their common acceptance, and when they have different acceptations in common language, these, when it is necessary, ought to be distinguished. It is sufficient to define words that are uncommon, or that are used in an uncommon meaning : *Reid's Intellectual Powers*, 219. The modern legislative practice is to have an introductory interpretation clause to each statute. The first general Interpretation Act was passed by the Legislature of Upper Canada in 1837 : 7 Wm. IV. c. 14. In 1849 a similar Act was passed by the Legislature of Canada : 12 Vic. c. 10. These Acts were consolidated in C. S. C. c. 5, and C. S. U. C. c. 2 ; and were made applicable to the whole Dominion with some additions in 1867 in *An Act Respecting the Statutes of Canada*, 31 Vic. c. 1. In 1850 a similar but shorter Act was passed by the Imperial Parliament (Lord Brougham's Act), 13 & 14 Vic. c. 21. See *Charlton v. Lings*, L. R. 4 C. P. 374.

"Owner;" in
Quebec.

Proprietor
or usufruc-
tuary.

"Owner, when it relates to the ownership of real property situated in the Province of Quebec, (d) means "proprietor" (e) or "usufructuary" (*usufruitier*) (f) either

(d) The definition of "owner" in the Quebec Election Act (38 Vic. c. 7, s. 2, subs. 3), is "any one who possesses real estate, or whose wife possesses real estate, whether as owner or usufructuary. Whenever one person has the mere ownership of real estate, and another has the enjoyment and usufruct thereof to his use and benefit, the person who has the mere ownership of such real estate shall not be entitled to vote as owner thereof, and the usufructuary shall in such case alone have the right to vote by reason of such real estate." The original clauses from which this section is taken are in the Canada Acts of 1849 and 1858 consolidated in C. S. C. c. 6, s. 5, subs. 4, 5: "4. The word 'owner,' shall signify proprietor, either in his own right, or in the right of his wife, or as usufructuary (*usufruitier*) of real estate in *fief*, in *censive*, in *franc alleu*, or in free and common soccage (22 Vic. c. 82, s. 23); 5. So that in Lower Canada whenever any person has the mere right of property in any real property, and some other person has the usufructuary enjoyment (*la jouissance et l'usufruit*) of the same for his own use and benefit, the person who has the mere right of property therein shall not have the right of voting as the owner of such real property at any such election, but in such case such usufructuary (*usufruitier*) shall alone be entitled to vote at such election upon such lands and tenements (12 Vic. c. 27, s. 38)." Further provisions applicable to Lower Canada in the above Acts were as follows: "Any deed or instrument in writing containing a promise of sale (*promesse de vente*) in favor of any person claiming to vote at any such election, and being in possession of the property mentioned in such deed or instrument in writing, or in favour of any other person or persons through whom he holds, shall in Lower Canada be considered, for the purposes of this Act, as a legal title vesting such property in the person so claiming to vote:" 12 Vic. c. 27, ss. 30, 31. "The word 'occupant' in the said first cited Act [22 Vic. c. 82] shall in Lower Canada signify a person occupying property otherwise than as owner, tenant, or usufructuary, either in his own right or the right of his wife, but being in possession of such property and enjoying the revenues and profits arising therefrom; and the word 'tenant' shall include any person who instead of paying rent in money is bound to render to the owner any portion of the produce of such property:" 22 Vic. (1859) c. 10, s. 8; C. S. C. c. 6, s. 5, subs. 6. Except for the term *franc alleu* in the above clause, the definition it gives would apply to all the Provinces. See notes to ss. 3 and 4, *post*.

(e) "Ownership is the right of enjoying and of disposing of things in the most absolute manner, provided that no use be made of them which is prohibited by law or by regulations:" *Civil Code L. C.* s. 406. A mere natural possession, such as that of squatter, without title, raises no presumption of right of property: *Stuart v. Ives*, 1 L. C. R. 193. But a squatter who is in possession of land for his own benefit may have a title sufficient to support his

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vote as occupant: *Brough on Elections*, 12. Acts of possession may sufficiently establish an ownership of land without producing the title deeds: *British American Land Co. v. Stimpson*, 3 L. C. R. 90. The delivery of incorporeal things is made by the delivery of titles, or by the use which the buyer makes of such things with the consent of the seller: *Civil Code L. C. s. 1494*. In sales of wild land tradition or delivery is necessary to convey the right of property: *Mallory v. Hart*, 2 L. C. R. 345. By the French law governing real estate in Quebec, tradition or delivery is not necessary to convey to a purchaser the right of property, and a sale made by a grantee may be rendered effective by a symbolical tradition arising from the delivery of the titles and plans: *Steward v. Bowman*, 3 L. C. R. 309. Plaintiff claimed certain lands under a deed of sale to him and the defendant claimed by prescription, and a general denial of plaintiff's title,—*Held*, that a symbolical tradition of the property would supply the place of an actual tradition, particularly as respects wild land: *Stuart v. Ives*, 1 L. C. R. 93. A sale is perfected by the consent alone of the parties, although the thing sold be not then delivered: *Civil Code L. C. s. 1472*; subject in contracts for the transfer of immovables to the special provisions for the registration of titles: *Ibid.* s. 1027. The property in the thing sold passes by a genuine contract of sale without delivery, even as against third persons: *Cushing v. Dupuy*, 5 App. Cas. 409. But where an insolvent had made a simulated sale, his assignee was held entitled to the movables found in the possession of the insolvent which he had so sold, but without actual tradition to the purchaser: *Ibid.* 22 L. C. J. 201. Where the purchaser by private sale of a quantity of wild land does not take possession after the sale to him, the land may be legally sold as belonging to his vendor: *Mallory v. Hart*, 2 L. C. R. 345. A purchaser who has been put into possession, and has had his title registered, can claim a title by prescription against a prior purchaser who had registered his title previously, but who never was in possession: *Thouin v. Leblanc*, 10 L. C. R. 370. By the ancient French law, as well as by the English law in force in Quebec, prescription runs in favor of a party in actual possession for thirty years: *Macdonald v. Lambe*, L. R. 1 P. C. 539. The registration of a title which is null will not render it valid, nor prejudice the right of the lawful proprietor even where the latter's title is not registered: *Steward v. Bowman*, L. C. R. 309. Acts of possession or enjoyment can only be made use of to explain the terms of a grant, supposing them to be ambiguous: *Chandler v. Attorney-General*, 3 Rev. L. 371, P. C. Although the owner of a house is not the owner of the ground on which it stands, it is an immovable as long as it is not demolished: *Chaloult v. Begin*, 5 Q. L. R. 119. But a frame house built with the materials of another taken from a different place is a movable: *Quintal v. Mondon*, 3 Leg. N. 166. When a lessor gives an emphyteutic lease of property to another he ceases, for the time being, to be proprietor. An emphyteutic lease is a contract by which the proprietor of an immovable conveys it for a time to another: *Civil Code L. C. s. 567*. If a property has been rented, ceded, or transferred for the sole purpose of giving right to vote, the name of the person to whom such property has been rented, ceded, or transferred for such purpose, will be struck off the list: *Re Kamouraska Electoral Lists*, 3 Q. L. R. 308.

Right of wife. in his own right (g) or in the right of his wife, (h) of real

(f) The usufructuary has the right to enjoy every kind of fruits, whether natural, industrial, or civil, which the thing subject to the usufruct can produce: *Civil Code L. C.*, s. 447. Natural fruits are those which are the spontaneous produce of the soil, and the produce and increase of animals. Industrial fruits are obtained by cultivation or working the soil: *Ibid.* s. 448. Civil fruits are rents, interest of sums due, and arrears of rent: *Ibid.* s. 449. A usufructuary cannot confer a title on which prescription could be founded: *Guy v. Guy*, 2 Leg. N. 109. A usufructuary transferred his usufruct of a property for seven years, and on an execution against him his transferee opposed the judicial sale of the usufruct,—*Held*, denying his opposition, that the transfer only vested in the transferee the mere enjoyment of the usufruct, and not the property in it: *Simpson v. Pelisle*, 9 L. C. R. 59. Until a legacy of a usufruct is accepted by the usufructuary, either expressly or by implication, the rent which constitutes the usufruct is not subject to process: *Bourdois v. Jodoin*, 4 Rev. L. 480. Usufruct of land in Quebec was given by deed of gift to A for life, with a limitation over if he died without children; and power was given to A to sell the land for a rent charge (*a constitution de rente*). A sold his life interest to B and subrogated B in all his rights under the deed of gift, and died without children: *Held*, that such sale and subrogation had not extinguished A's power to sell the land for a rent charge: *Leclère v. Beaudry*, L. R. 5 P. C. 362.

(g) These words in different parts of the Act indicate that it is the beneficial interest or estate in land, and not the dry legal estate, which confers the right to vote.

(h) The words "in the right of his wife" first appear in 22 Vic. c. 82 s. 23. The former words were "come to him by marriage or contract of marriage:" 12 Vic. c. 27, ss. 30, 31. The definition in the Quebec Election Act of 1875: "one whose wife possesses real estate," is more appropriate in view of the recent legislation respecting the property of Married Women. There are three kinds of marriageable contracts in Quebec under which the rights of the husband are different: (1) community of property; (2) simply excluding community; and (3) separate as to property. In the absence of a marriage settlement or covenants, the consorts are presumed to have intended to subject themselves to a community of property which is irrevocable as soon as the marriage is celebrated: *Civil Code L. C.* s. 1260: *Hughes v. Rees*, 5 Ont. R. 654. A wife cannot bind herself either with or for her husband otherwise than as being common as to property: *Civil Code L. C.* s. 1301. The husband alone administers the property of the community. He may sell, alienate, or hypothecate it without the concurrence of his wife: *Ibid.* s. 1292. If the marriage contract simply excludes community, the wife holds her property as separate estate, but the husband has the rights of a usufructuary: *Ibid.* ss. 1416-20. But where the contract is that the wife shall be separate as to property, the wife has the entire administration and free enjoyment of her property: *Ibid.* s. 1422; in which case the husband has no

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property in "franc alleu," (i) or in free and common soccage; (j) and when one person has the mere right of property or legal estate in any real property in the said Province and some other person has the usufructuary enjoyment (*la jouissance et l'usufruit*) of the same property for his own use as aforesaid, the person who has the

Trustee not
to vote.

estate in, and no right of possession of, the wife's property, it being "separate estate." Where the wife, separate as to property, leaves the enjoyment of her property to her husband, the latter on demand of the wife, or on dissolution of the marriage, must give up the parts then existing, and is not accountable for those previously consumed: *Ibid.* s. 1425. Husband and wife in community enjoy the benefit of the issues and profits of the *propres* on either side, and are bound to discharge the rents with which they are burdened: *Girard v. Lemieux*, 2 Rev. L. 78. Henry VI. of England, in 1441, conceded in favor of the citizens of Paris that a wife's share in the community should not be subject to confiscations pronounced against the husband, a privilege which was continued after the expulsion of the English: *Spence's Orig. Laws*, 372. See further, note (p) p. 24, note (a) p. 40, and note (x) s. 3 post.

(i) Prior to 1763 all lands in Canada were granted by the French King to Seigniors a *titre de fiefs*, or a *titre des cens et rentes en roture*: 2 *Burge's Col. & For. Laws* 387. Another species of tenure is *franc aleu roturier*. "Lands in *franc aleu* are those which acknowledge no superior in *feodalite*, and are not subject to seigniorial rights or duties:" *Ibid.* 397. "Land *roturier*, or as it is called *censier*, is that for which the grantee is bound to pay the direct seignior, from whom he holds it, rents and other duties in acknowledgment of the seigniority:" *Ibid.* Imperial and Canadian Acts since 1823 have provided for the extinction of feudal and seigniorial rights, under which the tenure of the lands belonging to the Crown seigniories and feudal estates could be commuted into free and common soccage: *C. S. L. C. c. 43*. By the Seigniorial Act of 1854, the rights of the seigniors under French grants were commuted, and it was provided that every *censitaire* in each seigniority should hold his land *franc alleu roturier*, free and clear of all *cens*, *droit de banalite*, *droit de retrait* and other feudal or seigniorial duties and charges whatever, except the *rente constituée* (ground rent) which was substituted for all seigniorial duties and charges: *C. S. L. C. c. 41*, s. 30. The acquisition by the Crown of lands held under a seignior as part of his *fief*, extinguishes all feudal rights in those lands subject to the seignior's mere right of indemnity: *Les Sœurs de l'Hotel Dieu v. Middlemiss*, 3 App. Cas. 1102.

(j) The Quebec Act of 1774 made the French law and customs of Canada applicable to property and civil rights, except as to the lands granted by the Crown in free and common soccage: 14 *Geo. III. c. 83*, s. 9. Between 1791 and 1829 it was only where the grantee desired it that lands in Lower

Usufructuary may vote.

mere right of property or legal estate therein shall not have the right of being registered as a voter or of voting under this Act in respect of such property, but in such case the person having the usufructuary enjoyment (*usufruit*) shall alone have the right of being registered as a voter and of voting in respect of such property under this Act: (*k*)

"Owner;" in other Provinces,

"Owner" (*l*) when it relates to the ownership of real property situated elsewhere in Canada than in the

Canada were granted in free and common soccage: 31 *Geo. III. c. 31, s. 43*. Since then all lands capable of being so held are granted in free and common soccage: 9 *Geo. IV. c. 77, L. C.* English law was introduced into Lower Canada by (1) Royal Proclamation, 1763; (2) Provincial Ordinance, 1764; (3) Quebec Act, 1774; (4) Constitutional Act, 1791; (5) Imperial Act, 1826, 6 *Geo. IV. c. 59*; (6) Provincial Act, 1829, 9 & 10 *Geo. IV. c. 77* (confirmed by 1 *Wm. IV. c. 20, Imp.*) But the only English law relating to civil rights introduced into Lower Canada was that relating to the tenure of lands in free and common soccage: *Steward v. Bowman*, 3 *L. C. R. 311, 369*. The Quebec Act introduced the English law as to wills as it existed at that time (1774) into Lower Canada: *Migneault v. Malo*, *L. R. 4 P. C. 123*.

(*k*) This carries one of the doctrines of equity relating to trustees and *cestui que trust* into the domain of political rights. A trustee can take no benefit from his trust. As the legal owner he holds the trust and absolute dominion over the property in the view of the law, but in equity the income, profits, or beneficial use of the property belongs wholly to others: *Story's Eq. Juris.* s. 964. A similar provision has been the law of England since 1696. See note (*n*) *post* p. 23.

(*l*) The word "owner" is a modern term in titles to real estate; but it is here used as a definition of a class of voters, rather than as indicating a person having a perfect or absolute title in fee simple. In the language of the law every possessor of real property is a tenant: as tenant in fee, tenant in tail, tenant for life, tenant for years, or tenant at will. The tendency of modern law has been to drop the theory of feudal service in the tenure of lands, and to provide that lands shall be held by allodial tenure simply. "Tenant in fee simple is he who hath lands to hold to him and his heirs for ever: and it is called in Latin *feodum simplex*, for *feodum* is the same that inheritance is; and *simplex* is as much as to say lawful and pure:" *Co. Litt.* 488. Tenant signifieth the tenure or the service whereby the lands are holden; and because such services were done with their ploughs that tenure was called tenure in soccage: *Ibid.* 331. All the lands or tenements in England in the hands of subjects are holden mediately or immediately of the King; for in the law of England we have not properly *allodium*, that is, any subject's land that is not holden: *Ibid.* 488.

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Province of Quebec, (*m*) means the proprietor either Proprietor in his own right or for his own benefit, (*n*) or if such

(*m*) See notes (*d*) to (*k*) *ante* pp. 18-22, as to Quebec. The Dominion Railway Act, 42 Vic. c. 9, s. 5, subs. 14, also defines "owner." See further, L. R. Digest (1880) 4604.

(*n*) "Proprietor either in his own right or for his own benefit." These words in the several classes of real property qualifications exclude trustees, or persons holding the dry legal estate in lands without any beneficial interest therein. Trusts were unknown to the common law, and if a trust of lands was created the trustee in whom they were vested was alone considered the owner. "The legal owner holds the direct and absolute dominion over the property in the view of the law, but the income, profits, or benefits thereof in his hands belong wholly, or in part, to others:" *Story's Eq. Juris.* s. 964. The statutes which required a qualification of value excluded the mere trustee from the franchise: *Hudson on Elections*, 79. The consequence was, that till 1696 all persons whose lands were subject to any trust or mortgage were incapacitated from voting: *Rogers on Elections*, 33. 7 & 8 Wm. III. c. 25, s. 7 (*Quære*, if in force in Ontario by R. S. O. c. 92), provided that no person should be allowed to vote by reason of any trust estate or mortgage, unless such trustee or mortgagee was in actual possession or receipt of the rents and profits of the said estate; but the mortgagor or *cestui que trust* in possession should vote for the said estate. The Reform Act, 2 Wm. IV. c. 45, s. 23 (Imp.) contained similar provisions; but doubts having arisen as to their meaning, the Registration Act, 6 Vic. c. 18, s. 74 (Imp.) enacted that no mortgagee should vote unless in actual possession or receipt of the rents and profits, but that the mortgagor in actual possession or receipt of the rents and profits might vote; and that no trustee should in any case have a right to vote at any election by reason of any trust estate, but that the *cestui que trust* in actual possession, or in receipt of the rents and profits, though he receive them through the hands of the trustee, might vote. A similar provision exists in Prince Edward Island. See note to s. 9, *post*. A trustee under a will, who has no beneficial interest in the property assessed to him, is not entitled to vote: *South Grenville (Jones's Case)*, Ho. E. C. 163. Mortgagor or mortgagee, if in possession, may vote: 1 *Stephens on Elections*, 457. Mortgagor out of possession, where the property was of greater value than the mortgage: *Held*, entitled to vote: *Middlesex (Chase's Case)*, 2 Peck. 103. Besides trust estates which do not confer the right of voting, there is a class of trust estates in which the chief beneficial interest passes to the trustee; such as estates conveyed to a lender in trust for the repayment of money, and which were introduced to obviate the inconvenience arising from the common law of mortgages, and with a view to the remedy by sale. From this two classes of securities have arisen: (1) one an absolute conveyance in fee, or for years, without any condition for re-entry for nonpayment, but with a covenant, or proviso, requiring the lender to re-convey on payment of the debt. This, for want of a more appropriate name, is called a mortgage; (2) the other, a

Right of
wife.

proprietor be a married man it means the proprietor in his own right, (o) or in the right of his wife, (p) of

conveyance by the borrower to the lender, or his nominee, in trust to sell if the debt is not paid after a certain period. In legal strictness both securities are merely conveyances in trust, the party to whom the legal estate is thus conveyed is properly a trustee. The enactment of 1696 may therefore be thus paraphrased: No creditor will be allowed to vote by reason of any such conveyance upon trust, unless such creditor, so being trustee or mortgagee, be in actual possession or receipt of the rents and profits of the estate: 1 *Stephens on Elections*, 459. Where land was granted by letters patent to A, her heirs and assigns for ever, to have and to hold to her the said A in trust for herself and her children M and F: *Held*, that A took the fee, and that no legal estate passed to the children: *Goldie v. Taylor*, 13 U. C. Q. B. 603.

(o) The words "if such proprietor be a married man, it means the proprietor in his own right" are unnecessary; such right is covered by the preceding words in this clause.

(p) "Proprietor in right of his wife." This definition of a class of voters entitled to the "ownership of real property" is based upon the rule of the common law that a husband by his marriage acquired a freehold interest *jure uxoris* during the joint lives of husband and wife in his wife's freehold for life, and her freehold of inheritance, even before the birth of issue: 1 *Bright's H. & W.* 112. Thus where an estate in fee comes to a *feme covert*, the interest of the husband and wife in the estate is a seisin in fee in both, in right of the wife: *Polybank v. Hawkins*, Doug. 329. And upon his having issue by her born alive who could inherit the estate, he becomes tenant by the curtesy, which entitles him to an estate in his wife's freehold for his life, after the death of his wife: 1 *Bright's H. & W.* 116. But if the husband is an alien, he will take no interest in his wife's real estate: *Ibid.* 9. Nor will he acquire any right in his wife's leaseholds: *Theobald v. Duffoy*, 9 Mod. 104. Where a married woman obtained a grant of lands under letters patent from the Crown, her husband need not have entered upon the land in order to entitle him to tenancy by the curtesy, the letters patent *suo vigore* constituting seisin in fact: *Weaver v. Burgess*, 22 U. C. C. P. 104. A grant to a married woman of a life estate in lands does not require the assent of her husband to pass the title to her; and unless he repudiate it in some way, both will be seised in her right: *Nolan v. Fox*, 16 U. C. C. P. 565. Though a man has been in possession for twenty years of lands granted to his wife for life, he does not thereby acquire a title by virtue of the Statute of Limitations, for he is merely seised with her, by operation of law, of her estate therein: *Ibid.* Where it is sought to establish a marriage by repute, it is essential that such repute should be general and uniform; a divided repute will not suffice: *Henderson v. Wees*, 25 Gr. 69. See also, *Roblin v. Roblin*, 28 Gr. 439. By the Roman law when the wife passed in *manum viri*, all that she had belonged to her husband; but when she did not, all her property belonged exclusively to

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herself: *Sanders's Just.* 242. Among the semi-barbaric nations of a later time, marriage was a species of partnership, in which husband and wife had each their separate rights. Any profits or purchases with their joint property were divided between them in proportion to their separate property: *Spence's Orig. Laws*, 373. Under the common law of England, as under the Roman law, a married woman was more helpless than infants and lunatics, the two other classes of persons under disability in whose company she habitually figured in English law. Everything she acquired at or after marriage went to her husband unless she had a settlement to her separate use. She had no legal individuality apart from her husband. In a Court of Equity (though not in law) *baron* and *feme* are considered as two different persons: 3 *P. Wms.* 38 n. Where a gift was made, or an estate was conveyed, to a husband and wife and a third person, the husband and wife, being in legal fiction one person, took only one-half of the gift or estate, and the third person the other half: 1 *Co. Litt.* 739; *Dias v. DeLivera*, 5 App. Cas. 135. Recent legislation, however, has altered this old doctrine of the common law, so that now the wife would take her one-third equally with her husband and such third person. "The Act [45 & 46 Vic. c. 75, Imp.] makes such alterations in the relation of husband and wife that it severs that unity of person and divides that compound person, which the law formerly recognized, to such an extent as to render it wrong for the Courts now to apply the old principle, which was founded on unity of person:" *Per Chitty, J.*, in *Re March*, 24 Ch. D. 222. "The old fashioned notion that women need legislative protection, even against their husbands, is fast fading in the light of modern legislation:" *Per Harrison, C. J.*, in *Kerr v. Stripp*, 40 U. C. Q. B. 134. Where recent Provincial legislation has not altered the common law doctrines respecting married women, the right of the husband to vote as "proprietor in right of his wife" will be governed by the old decisions. By the common law the husband has *jure mariti* the right to vote in respect of his wife's freehold property, as having acquired the estate by marriage: *Rogers on Elections*, 159. So that if an estate should descend to any number of females the husband of each would have a right to vote: 1 *Co. Litt.* 59. A husband, while possessed in the right of his wife, has the same right of voting as if possessed in his own right: 1 *Stephens on Elections*, 513. But in all these cases of freeholds *jure uxoris* it is the *beneficial* freehold, not the mere legal estate, which confers the vote on the husband: *Ibid.* 516. Prior to the Married Woman's Property Acts a husband excluded by a marriage settlement from all interest in his wife's estate, could not vote: *Rogers on Elections*, 35. Where, by a marriage settlement, property is vested in trustees for the separate use of the wife, or where property, after the marriage, is conveyed or devised to trustees for the separate use of the wife, the husband takes no interest in such property, and can by no means vote in respect thereof: *Elliott on Parly. Electors*, 15. So where the intention appears that the property bequeathed to, or settled upon, the wife should be to her sole and separate use, whether given to her without the intervention of trustees, or to her husband for her, a Court of Equity will effectuate the intention by converting the husband into a trustee for the wife: *Ibid.* Where there is a settlement to a wife's separate use, the husband acquires no interest in her property: *Scarborough v. Borman*, 1 Beav. 34; s. c. 4 Jur. 33. And such

settlement to her separate use, though made while she is *discovert*, is good against an after-taken husband: *Tullett v. Armstrong*, 4 My. & Cr. 377; s. c. 4 Jur. 34. No technical words are necessary to raise a trust for such separate use: 9 *Jarm. Convey.* 102. "Enjoy the profits," imply separate use: *Tyrrell v. Hope*, 2 Atk. 561. So "to be at her own disposal:" *Pritchard v. Ames*, T. & Russ. 222; or, "for her livelihood:" *Darley v. Darley*, 3 Br. C. C. 381; or, "to deliver securities to her whenever demanded:" *Dixon v. Olmius*, 2 Cox 414; or, "to pay into the proper hands of A:" *Hartley v. Hurle*, 5 Ves. 540. Where one C married a widow who was entitled to an estate tail, and previous to the marriage C., and his intended wife joined in a deed to V as trustee, in which C covenanted with the trustee V that the rents and profits should remain to the separate use of the wife, that the wife might dispose of the estate, and that he would join in all necessary acts for rendering her disposal valid; it was contended that, as C had no right to receive any profit from the land, it could not be said that he had any freehold which would entitle him to vote: *Held*, that C had no right to vote: *Bedfordshire (Conquest's Case)*, 2 Lud. 422. As C had no right to receive any profit from the land, it could not be said that he had a freehold of the value of 40s. a year, and upon this ground the vote was rejected: 1 *Stephens on Elections*, 516. Where the wife's estate was assessed in the name of the wife and of her tenant, it was held that the husband could not vote: *Bedfordshire (Brasier's Case)*, 2 Lud. 530. A wife's estate was assessed in the name of her guardian, from whom, on coming of age about two years before, she had obtained the possession: the husband, before and after his marriage, had been in the possession of the estate as tenant, and had been so assessed: *Held*, vote bad: *ibid.* (*Joyce's Case*), 529. One R claimed to be seised in fee in right of his wife under a devise to her *dum sola* to her separate use. It was contended that an absolute estate having been given to the wife *dum sola* the limitation to her separate use was repugnant to the nature of the estate limited to her, and was therefore void. This contention was held to be at variance with the long established doctrine of Courts of Equity, and R's vote was rejected: 1 *Stephens on Elections*, 513. One W devised his real estate to trustees to the use of the wife of B for her life, remainder to her eldest son, and remainders over. The estate was in the possession of a tenant. B, by deed to which his wife was not a party, covenanted with each of his nine sons to stand seised to each of them of an undivided moiety as to one-ninth of such moiety for the joint lives of himself and each of such sons. By another deed he granted the other moiety to his son-in-law for their joint lives. On this case counsel was of opinion that B had a freehold in right of his wife, and was able to confer a freehold interest on his grantees for the joint lives of himself, his wife, and each specific grantee; and that, as to the sons, the deed operated either as a covenant to stand seised, or as a grant of the reversion; and as to the son-in-law, it operated as a grant of the reversion: *Ibid.* 515. Between the registration and the election the voter, by a deed of separation between him and his wife, covenanted with her trustee that while they lived apart she should have "undisturbed possession" of the house for which he was on the register of voters, and that "if he should enter therein" he should

“be deemed a trespasser.” *Held*, vote good: *Lichfield (Stringer's Case)*, Bar. & Aus. 372. Estates by the curtesy and in dower are estates for life, arising as they do out of marriage, and those entitled to such estates in right of their wives may vote without occupation: *Rogers on Elections*, 9. Tenants by the curtesy vote as freeholders: *Chambers' Dict. of Elections*, 368. Where the right of election was vested in freeholders of inheritance, a tenant by the curtesy voted, but on contestation the vote was abandoned by the candidate for whom he voted: *Tavistock*, 10 Com. J. 576. The second husband of a doweress is entitled to vote in respect of his wife's estate in dower, although such dower “has not been assigned or set by metes and bounds,” provided he is in receipt of the profits thereof: 20 *Geo. III.* c. 17, s. 12 (Imp.) (*Quere*, if this statute is in force in Ontario by R. S. O. c. 92.) In Prince Edward Island the husband of a doweress, where the dower has been set off and reduced into possession, may vote: 10 *Vic.* c. 21, s. 29, P. E. I. The Ontario Election Law of 1868, by the definition of “owner,” gave to a husband whose wife had an estate for life, or a greater estate, the right to vote in respect of his wife's property, and a petitioner having that qualification was held entitled to petition: *Prescott*, Ho. E. C. 1. Where the owner of real estate died intestate leaving daughters, and the husband of one of such daughters leased the property and received the rents: *Held*, not entitled to vote: *Brockville (Leslie's Case)* Ho. E. C. 129. The recent legislation in the various Provinces respecting the Property of Married Women, and its effect on the husband's common law right to vote *jure mariti*, will require careful consideration in construing the above clause. In Ontario, R. S. O. c. 125, and 47 *Vic.* c. 19, O. have made the property of a married woman (1) “separate estate;” have freed it from (2) the husband's joint ownership; (3) all his right to the rents, issues, and profits thereof; have abolished (4) his tenancy by the curtesy, except where the wife had not disposed of her estate *inter vivos*, or by will. “The operation of this section (s. 4, R. S. O. c. 125) is to divest the husband of all estate and interest in the real estate of his wife.” *Per* Gwynne, J. in *Merrick v. Sherwood*, 22 U. C. C. P. 477. “She is to hold it free from any estate of the husband during her life-time, or as tenant by the curtesy, thus depriving him of any interest in her estate.” *Boustead v. Whitmore*, 22 Gr. 226. Such portions of the Act as would deprive parties of their vested rights, if held to affect women married before its passing, should be so read as not to interfere with such rights; while the portions of the Act which have not that effect should go into operation as regards women married before as well as after the 2nd March, 1872: *Adams v. Loomis*, 22 Gr. 99. It applies to lands acquired after that date by women who were married prior to the Act: *Ibid.* 24 Gr. 242; and to marriages which take place after the Act: *Dingman v. Austin*, 33 U. C. Q. B. 190. The Act of 1864, 47 *Vic.* c. 19, O.—based on the Imperial Act, 45 & 46 *Vic.* c. 75—repeals R. S. O. c. 125, and enables a married woman to convey her own real estate, or to release her dower in her husband's lands without her husband joining in the conveyance (s. 22). See also, *Re Coulter and Smith*, 8 Ont. R. 536. *New Brunswick*: C. S. N. B. c. 72, provides that real property belonging to a woman before, or accruing after, marriage except such as may be received from her husband while married, “shall vest in her and be owned by her as her separate property,” free from the debts of or disposal by her husband.

without her consent ; but liable for her debts contracted before marriage, and for judgments against her husband for her torts. By C. S. N. B. c. 100, s. 16, real estate held as the separate property of a married woman is to be rated in the name of her husband ; and by c. 4, the party "assessed" for real property is the one who is qualified to vote. *Nova Scotia*: 47 Vic. c. 12, N. S., provides that a woman married before the Act (19th April, 1884) shall hold her property, not taken possession of by her husband, free from his debts and control, as if she were a *feme sole* ; and that a woman married after the Act shall hold her property to her "separate use," free from any estate and debts of her husband during her lifetime ; but the husband's tenancy by the curtesy is preserved where the wife has not disposed of her estate during her life-time, or by will (s. 4). Rents, &c., in all cases to be her "separate property," and her receipts alone to be valid ; but her husband may be her agent to collect them (s. 6). But by s. 7, "any estate or interest to which a husband may, by virtue of his marriage, be entitled in the real property of his wife, whether acquired before or after the passing of this Act," is not during her life to be subject to his debts. *Manitoba*: C. S. M. c. 65, provides that every woman married after the Act (14th May, 1875) shall hold her real property free from the debts, control, and disposition of her husband without her consent, as if she were a *feme sole* (s. 1) ; and that a woman married prior to the Act shall hold her real estate not then taken possession of by her husband as if she were a *feme sole* (s. 2). "Any estate or interest to which a husband may, by virtue of the marriage, be entitled in the real property of his wife shall not, during her life, be subject to the debts of her husband" (s. 12). By s. 19, the real estate mentioned in ss. 1 and 2, and the rents, issues, and profits thereof, subject to the trusts of any settlement, shall "be held and enjoyed by any married woman for her separate use, free from any estate or claim therein or thereto of her husband during her life time, as tenant by the curtesy or otherwise ; and her receipts alone shall be a discharge for any rents, issues, and profits of any such real estate." It also enables her to make alone a deed, or deeds, of her real estate, and to make contracts, promissory notes, &c., without the assent of her husband, as if a *feme sole* ; and "no possession, whether actual or constructive, of the husband of any property, real or personal, of a married woman, shall give the husband any title thereto, as against his wife, during her life time." *British Columbia*: By the 36 Vic. No. 29, the real estate of any married woman, owned by her at the time of her marriage or acquired during coverture, and the rents, issues, and profits thereof, shall, without prejudice to the trusts of any settlement, "be held and enjoyed by her for her separate use, free from any estate or claim of her husband during her life time, or as tenant by the curtesy ; and her receipts alone shall be a discharge for any rents, issues, and profits ; and any married woman shall be liable on any contract made by her respecting her real estate as if she were a *feme sole*." By s. 7, the husband is not liable for the contracts made by his wife before marriage. But an amending Act of 1883 recites that "it is not just that the property which a married woman has at the time of her marriage should pass to her husband, and that he should not be liable for her debts contracted before marriage," amends the above s. 7, and provides that "a husband and wife married after the passing of this Act may be jointly sued for any such debt." It then limits the husband's liability to the extent

freehold estate, (g) legal or equitable, (r) in lands and tenements held in free and common soccage of which such ^{Legal or equitable estate.}

of certain assets, viz.: "The value of the chattels real of the wife which shall have vested in the husband and wife. The value of the rents and profits of the real estate of the wife which the husband shall have received." *Prince Edward Island*: 23 Vic. c. 35, P. E. I. Where a married woman is deserted by her husband, her property vests in her free of his debts or control. The cases prior to the recent legislation respecting the Property of Married Women noted above, shew that, where a wife's property had been settled upon her as "separate estate," or to her "separate use," the husband took no estate or interest in such property "in right of his wife," and therefore had no vote. So where recent Provincial legislation has made the wife's property "separate estate," her husband, having no estate therein, is not qualified to vote as "proprietor in right of his wife." But his right to vote may, perhaps, be arguable under the clause defining "occupant" if he be "in actual occupation of real property otherwise than as owner in right of his wife," provided the next word "and" can be read as "or," for "the fair and rational construction of the statute;" or if such reading would "answer the sense of the statute:" *Dwarris on Statutes*, 682. "When the sense is the same they are all one, and the words conjunctive and disjunctive are to be taken *promiscuè*." *Creswick v. Rokesby*, 2 Bulst. 47. "In common conversation the word 'or' is frequently used for 'and' and the word 'and' for 'or'." *Seccombe v. Edwards*, 28 Beav. 440. Such a construction may be warranted in certain cases by the latter part of subsecs. 4 of ss. 4 and 5. See further, note (h) p. 20, ante, and note (a) p. 40, and note (x) s. 3, post.

(g) "Freehold estate." The statute 8 Henry VI. c. 7 required voters to have "freehold" (*frank tenement*), and the 18 Geo. II. c. 18 "a freehold estate." These terms have been construed to mean freehold in tenure, and freehold in interest: *Heywood on Elections*, 27. "In legal consideration, estates of freehold are of larger extent than those of chattel interest; and estates of inheritance are of larger extent than estates of mere freehold. Under interests of inheritance are classed: (1) estates after possibility of issue extinct; (2) estates for life, absolute or determinable. Chattel interests are: (1) estates for years; (2) estates for uncertain times, by devise or limitations of use; (3) estates by statute merchant, statute staple, and *elegit*; and (4) estates at will: 3 *Preston's Conveyancing*, 162, cited 1 *Co. Litt.* 488. The reversioner of a freehold, if the estate is let for life, cannot vote; but he may, if the letting is for a term of years: *Chambers on Elections*, 599. See also, *Simpson v. Hartman*, 27 U. C. Q. B. 460.

(r) "Equitable freehold estate." An equitable estate, but not an equitable right or interest, in lands confers the right to vote: *Elliott on Electors*, 53. Courts of Equity consider that which is agreed to be done as actually performed. So where a person has agreed to sell, and another has agreed to purchase, certain premises, the vendee being put into possession of the estate by virtue of the agreement; or becoming otherwise entitled to a specific

performance of the contract; or when the vendor becomes a trustee for the vendee to convey to him the estate, the vendee has such an equitable estate as gives him a right to vote: *Seton v. Slade*, 7 Ves. 265; *Rawlings v. Burgess*, 2 V. & B. 387; *Jennings v. Robertson*, 3 Gr. 513. But conditions may be introduced by which the vendee will not acquire an equitable estate: *Levy v. Lindo*, 3 Mer. 81; *King v. King*, 1 My. & K. 442; *Wall v. Bright*, 1 J. & W. 494; *Acland v. Gaisford*, 2 Mad. 28. The question in the cases affecting the right of vendor, or vendee, to vote, seems to be: who is to have the rents and profits of the estate, by virtue of the agreement, until the legal conveyance is made; or who must bear any loss which may happen, or be entitled to any benefit which may accrue, to the estate, between the agreement and the conveyance? *Rogers on Elections*, 33; *Heywood on Elections*, 111. If the vendee is in a position to compel a conveyance, in a Court of Equity; if he has paid his purchase money, or a part of it, under an arrangement with regard to the remainder, and has been let into possession, which generally speaking amounts to an acceptance of the title, little doubt can exist of his right to vote: *Rogers on Elections*, 34. Being in possession under a contract, whether it be for the fee or a term, a purchaser is in either as mortgagor or *cestui que trust*: *Moore v. Garisbrooke*, 12 C. B. 661. If there be any doubt as to what a Court of Equity would do, the vendee should be treated as having an inchoate right merely, but not an equitable estate: *Rex v. Geddington*, 2 B. & C. 129. Or that he has no estate, but an equitable right merely: *Rex v. Llantillio Grossenny*, 5 B. & C. 461. "A contract for valuable consideration, by which it is agreed to make a present transfer of property, passes at once the beneficial interest, provided the contract is one of which a Court of Equity will decree specific performance. In the language of Lord Hardwicke, the vendor becomes a trustee for the vendee:" *Per* Lord Westbury, C., in *Holroyd v. Marshall*, 10 H. L. C. 209. Where A conveyed his lands to his father for certain promissory notes, but before the making of the assessment roll he made a parol agreement for the re-purchase of the lands, on which the promissory notes were given up to A, but no re-conveyance was executed by the father until after the revision of the assessment roll. A tenant occupied the house, but A boarded with him; and subsequently A leased one of the rooms for a lodge: *Held*, that A had an equitable estate in the lands from the time of the giving up of the notes: *Regina ex rel. Cheyne v. Tilt*, 7 U. C. L. J. 96. A made a contract in writing for the purchase of certain lands, and paid the whole amount of the purchase money, but the conveyance was, at his own request, delayed. The land was unlet, and he had not taken possession of the land, nor exercised any acts of ownership thereon, he having allowed the vendor to remain in actual possession: *Held*, that A was not entitled to vote: *Anelay v. Lewis*, 17 C. B. 316; s. c. 25 L. J. C. P. 121. There must be an actual possession, or receipt of the rent and profits. And it could not have been the intention of the Legislature to give to a person, who has a mere equity, a right of voting which the same person would not have had unless he had acquired a complete title both at law and equity: *Per* Jervis, C. J., *Ibid.* A bare permission to receive the rents and profits of an estate unconnected with the legal interest in it, gives no right to vote; as where a voter has sold his estate to a person who at the sale executed a bond to permit him to receive

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the rents and profits for life : *Held*, that he had no right to vote : *Gloucestershire*, 1 *Stephens on Elections*, 456. So where a father alleged that the son virtually owned a certain unoccupied lot, of which he had no deed; the father collected the rent, in wood, from a tenant who leased it for the pasture, and paid over the proceeds to the son : *Held*, that the son had no vote : *Per Richards, C. J.*, in *Stormont (Braydon's Case)*, Ho. E. C. 21. The receipt of rents and profits of an estate by one who is a stranger to the estate will give him no right to vote, nor will it deprive the real owner of his vote : *Gloucester*, 1 *Stephens on Elections*, 457 ; *Bedfordshire (Trotman's Case)*, 2 *Luders* 431. Where a person assessed for land of which he had no title from the Crown, or by a tax sale, leased it to another, the fee of the land being in the Crown : *Held*, not entitled to vote : *Lincoln (2) (Clark's Case)*, Ho. E. C. 500. When the estate was devised to trustees to sell, for the payment of debts, and the surplus to be divided between A (the voter) B and C, and the estate had not been sold ; it was argued that the remaindermen took an equitable interest : *Held*, vote good : *Middlesex (Rice's Case)*, 2 *Peck*. 106. When an estate has been devised to T. in trust to pay legacies to the younger children, and T. refused to take the land subject to the trust, but the younger children, with his consent, took possession of the land in satisfaction of their legacies : *Held*, they were purchasers for a valuable consideration, and that they were entitled to vote : *Ibid. (Smith's Case)*, 2 *Peck*. 424. Where the devisee of an estate, charged with an annuity, put the annuitant in possession in satisfaction of the annuity : *Held*, that the annuitant had a right to vote : *Bedfordshire (Bonfield's Case)*, 2 *Lud.* 440. Where a grantor conveyed an estate to trustees for the payment of debts out of the rents any profits, and to be re-conveyed when the debts were all paid, but at the election such debts had not been paid : *Held*, that the grantor was not entitled to vote : *Yorkshire, Heywood on Elections*, 108. Where a testator directed his real estate to be sold, and the proceeds divided amongst his children, the children verbally agreed among themselves not to convert the property, but one of the children was a married woman having infant children : *Held*, that no election to extinguish the converting trust could be made, and therefore the testator's sons had not a legal or equitable estate in the land which would qualify them to vote : *Spencer v. Harrison*, 5 C. P. D. 97. Where the estate is under a trust for sale the qualification to vote remains so long as the estate can legally be kept unconverted, but no longer : *Ibid.* Where the voter was the equitable owner, the deed being taken in the father's name, but the son furnished the money, the father being in occupation with the assent of his son, and the proceeds not divided : *Held*, that being the equitable owner, notwithstanding the deed to the father, he had the right to be on the roll : *Stormont (Blair's Case)*, Ho. E. C. 21. So where a verbal agreement was made between the voter and his father before the preparation of the assessment roll, and on this agreement the voter from that time had exercised control, and had taken the proceeds to his own use, although the deed was not executed until after the revision of the roll : *Held*, entitled to vote : *Ibid. (Gollinger's Case)*. Where the voter had only received a deed of the property on which he voted after the revision of the assessment roll, but previous to that date had been assessed for, and paid taxes on the place, but not owning it : *Held*, that not possessing the qualification at the time he was assessed,

or at the final revision of the roll, he was not entitled to vote: *Ibid.* (*Cahey's Case*). Where a voter assessed for property sold it before the revision of the assessment roll he was, *Held*, not entitled to vote: *South Grenville (Place's Case)*, Ho. E. C. 163. Where the father had made a will in his son's favour, and told the son if he would work the place and support the family he would give it to him; and the entire management remained in the son's hands from that time, the property being assessed in both names, the profits to be applied to pay the debts due on the place: *Held*, that as the understanding was that the son worked the place for the support of the family, and beyond that for the benefit of the estate, which he expected to possess under his father's will, he did not hold immediately to his own use and benefit, and was not entitled to vote: *Stormont (Weort's Case)*, *Ibid.* 21. Where the owner of a lot told his son that he might have the lot, and to get a deed drawn, and the lot had been assessed in the son's name for some years, and was rented by the father to a tenant with the son's assent, the rent being paid to the father: *Held*, that as there was nothing but a voluntary gift from the father to the son, without possession, the son's vote was bad: *South Grenville (Lundy's Case)*, *Ibid.* 163. Where a father, who resided on the lot, had made a will of the lot in favour of his son, who was assessed for it, and the son took the crops, except what was used by the father—the son residing on another farm: *Held*, the son had not such a beneficial interest in the lot as would entitle him to vote: *Ibid.* (*Mullin's Case*). Where A, who resided out of the riding, had made a contract to sell certain land to B, who was in possession of the land, but the deed had not been executed: *Held*, that A was a mere trustee for B and had no right to vote: *Ibid.* (*Holden's Case*). Where the property of an intestate was sold under a mortgage, and the deed made to his widow, but three of the sons furnished some of the purchase money, all being in possession, and the eldest son being assessed, it was *Held*, that, as the presumption from the evidence was that the property was bought for the widow, and not for the eldest son, he had no vote: *Ibid.* (*Morrow's Case*). An administrator cannot qualify on real estate, assessed in his own name, but belonging to the estate of the intestate: *Regina ex rel. Stock v. Davis*, 3 U. C. L. J. 128. The equitable interest in a term of years confers the right to vote: *Vance's Case*, Alc. Reg. Ca. 269. But such equitable interest cannot arise until the time for granting the lease has arrived: *Trotter v. Watson*, L. R. 4 C. P. 434. An equitable life estate in land gives the right to vote: *Roberts v. Percival*, 18 C. B. N. S. 36; *Roberts v. Drewett*, *Ibid.* 48; although there may be no legal conveyance of the estate, as in the case of a freehold interest in Benchers' Chambers in Lincoln's Inn: *Middlesex (Anstey's Case)*, 2 Peck. 109; or as in the case of an equitable freehold in lands held by the perpetual curate or incumbent of a parish: *Wallis v. Birks*, L. R. 5 C. P. 222; or by a minister of a congregation under the trusts of a deed: *Burton v. Brooks*, 11 C. B. 41, s. c. 16 Jur. 569. See *contra*, *Collier v. King*, 11 C. B. N. S. 14, s. c. 8 Jur. N. S. 676. But not in respect of a church or cemetery, although the fees received therefor may be within the value prescribed, such fees not arising out of the land, but for services performed: *Kirton v. Dear*, L. R. 5 C. P. 217. The members of a partnership whose lands were vested in trustees for the benefit of the partnership, though deemed and considered as personal, and not real, estate: *Held*, that such

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partners had an equitable seisin in such lands to entitle them to vote: *Baxter v. Newman*, 7 M. & Gr. 198, s. c. 9 Jur. 829. But not shareholders in a bridge company: *Wadmore v. Dear*, L. R. 7 C. P. 212; nor shareholders in an ordinary joint stock company: *Bulwer v. Norris*, 30 L. J. C. P. 25. A purchaser at a tax sale, until the expiration of the time limited for redemption, is only an equitable mortgagee of the premises sold: *Compton v. Pope*, 1 P. E. I. 181. A sheriff's deed of land sold under execution is void if the land is not described by metes and bounds: *Yeo v. Betts*, *Ibid.* 116. And a Sheriff's certificate of sale of land for taxes, describing the lands as the west part of a lot, is invalid: *Knaggs v. Ledyard*, 12 Gr. 328; *Booth v. Greenwood*, 32 U. C. Q. B. 23.

(s) The expressions "actual possession," "actual occupation," "bona fide occupant," imply an actual possession in fact, and not a mere right of possession. "Actual possession," being therefore a well-known legal phrase or expression, the Legislature cannot be taken to have used it in any other than in such well-known sense; and it is contradistinguished from such possession in law or right as the bare delivery of the deed of grant would confer: *Per Tindal, C. J., in Murray v. Thorniley*, 2 C. B. 217; s. c. 10 Jur. 270. If the conveyance be at common law, as A. to the use of A., the grantee has not possession until he has actually received part of the rent: *Ibid.* But if it operate by the Statute of Uses (27 Hen. VIII. c. 10), as to A. to the use of B., the person to whose use it is granted has possession as soon as the grant is executed: *Herlis v. Blain*, 18 C. B. N. S. 90. "If the question came before me for the first time, I should have inclined to hold that 'actual possession' meant something which was capable of demonstration, and not a mere parchment title:" *Per Grove, J., in Hadfield's Case*, L. R. 8 C. P. 319. "I think that the epithet 'actual occupation' is to be applied to the fact of residence or occupation, and not to the character or nature of the occupation, the voter must be actually in occupation, but his occupation need not be a personal occupation of every room in the house:" *Per Crampton, J., in Duigan's Case*, Alc. Reg. Ca. 116. It is difficult to say what the meaning of the words "actual possession," as contradistinguished from "possession," is, since there can be but two modes of possessing property, viz., by actual possession, or by receipt of the rents and profits: 1 *Stephens on Elections*, 461. In legal understanding, a person in actual receipt of rents is said to be in possession: *Ibid.* 464. There must be an actual occupation in fact of the whole of the tenement by the party hiring the same, and the mere letting of some of the rooms therein to lodgers is not an actual occupation: *Rex v. St. Nicholas, Rochester*, 5 B. & Ad. 219; s. p. *Rex v. St. Nicholas, Colchester*, 2 A. & E. 599. But if the part occupied be of the required value, there does not appear to be any reason for excluding the vote: *Elliott on Electors*, 90. One who lets the eatage of his grass does not cease to occupy as tenant: *O'Shea v. Meara*, 1 Ir. R. (R. App.) 1. See further, *Heyden v. Tiverton*, 4 C. B. 1; s. c. 10 Jur. 950; *Orme's Case*, L. R. 8 C. P. 281, and notes to s. 3, *post*.

(t) In popular language, and for many purposes in legal presumption, a

"Tenant."

"Tenant" (u) means as well a person who is bound to

man is said to be in possession of property which is occupied by tenants who pay him rent for it: *Rogers on Elections*, 81. But the receipt of rents and profits by one who is a stranger to the estate will give no right to vote: *Gloucester*, 1 *Stephens on Elections*, 457. Nor would a person be entitled to vote for land he does not own, though he be assessed for it and receives rents from a tenant: *Lincoln* (2) (*Clark's Case*), Ho. E. C. 500. And such payment of rent to a stranger will not deprive the real owner of his right to vote: *Bedfordshire* (*Trotman's Case*), 2 Lud. 431.

(u) In the language of the law, every possessor of landed property is a tenant, with reference to such property; but in this Act the term is used in the popular sense of one holding the land of another, who is termed his landlord; and for the use of which land the tenant pays rent in money or produce. The relation of landlord may be created by assignment or lease. Where the landlord conveys the whole estate to an alienee, leaving no reversion to himself, the conveyance amounts to an assignment. When he grants only a portion of an estate, reserving to himself a reversion, the conveyance is a lease. Where a lessee for years demises part of his property to another for the whole of his term, the demise is called an assignment *pro tanto*. Where he disposes of his term, reserving a reversion of even one day, the transfer is, with reference to the original lease, an underlease: *Crusoe doe dem. Blencowe v. Bugby*, 3 Wils. 234; s. c. 2 W. Bl. 766. A, the former tenant of a house, died intestate, leaving a widow and infant children in possession. No administration was taken out to his estate. B married the widow, and went into possession of the house, paid all rent and taxes, and maintained the children of the intestate: *Held*, that B was entitled to vote: *McLoughlin's Case*, Alc. Reg. Ca. 249. Where a party entered into possession of a lot which had no house or building, and sowed a crop there, upon a verbal understanding that he was to have the product, but no special time was mentioned: *Held*, that a sufficient tenancy was created: *Mulhern v. Fortune*, 8 U. C. C. P. 434. P, owning land, agreed with M & B that he would furnish a team of horses, the farming implements and seed for a certain lot; they agreed to do the work in a proper manner and in the proper season, as P should direct, harvest the grain, pay for their share of threshing, and keep up fences, &c. M & B for the first year had one-third, and in the second year one-half of the crops: *Held*, not a letting of the land on shares, giving to M. & B. a term of possession, but a contract for remuneration for their care and labour in growing the crops as P should direct: *Park v. Humphreys*, 14 U. C. C. P. 209. A tenant under a lease from year to year cannot create a sub-tenancy, nor a right to vote in the sub-tenant, by giving another person a share in the crops grown on the leased property: *Brockville* (*Dunham's Case*), Ho. E. C. 129. Where the voter and his son leased certain property, and the lease was drawn in the son's name alone, and when the crops were reaped the son claimed they belonged to him solely, the voter owning other property, but being assessed for this only: *Held*, not entitled to vote: *Stormont* (*Hill's Case*), Ho. E. C. 21. Where the voter was the tenant of certain property

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belonging to his father-in-law, and before the expiration of his tenancy the father-in-law, with the consent of the voter (the latter being a witness to the lease), leased the property to another, the voter's lease not expiring until November, and the new lease being made the March previous: *Held*, that after the surrender by the lease to which he was a subscribing witness, he ceased to be a tenant, and that to entitle him to vote he must have the qualification at the time of the final revision of the assessment roll, though not necessarily at the time he voted, so long as he was still a resident of the electoral division: *Ibid.* (*Rupert's Case*). The occupant of any separate portion of a house, such portion having a distinct communication with a public road or street by an outer door, is a householder: R. S. O. c. 174, s. 84. Where a house is let out in separate portions to different tenants, and the owner or landlord does or does not reside on the premises, though there is but one outer door common to all tenants, each distinct portion so let is the house of such occupier, and each tenant is entitled to be rated, and to be registered as a voter: *Reg. ex rel. Forward v. Bartels (Long's Case)*, 7 U. C. C. P. 539; *Cirencester*, 2 Fras. 451; *Great Marlow (Crosby's Case)*, B. & Aus. 100; *Score v. Huggett*, 7 M. & Gr. 95; *Rex v. Unsworth*, 5 A. & E. 201; *Toms v. Luckett*, 5 C. B. 23. Where rooms in a factory, in which each tenant had his own spinning machine, worked by a steam engine belonging to and worked by the landlord, but each tenant had the exclusive use of his own room and kept the key of the door, which he approached by a common staircase: *Held*, that each tenant was entitled to vote: *Wright v. Stockport*, 5 M. & Gr. 33. Where a person occupied exclusively the whole of the second floor in a house, and the landlord lived in the house and occupied the shop. The outer or street door was kept closed, but both inmate and landlord had keys thereto: *Held*, that such inmate was not a joint occupier, nor entitled to vote: *Wansey v. Perkins*, 7 M. & Gr. 155. The occupiers of chambers in a college, or in the Inns of Court, are entitled to vote: *Evans and Fynche's Case*, Cro. Car. 473; *Middlesex (Anstey's Case)*, 2 Peck. 109; *Stamper v. Sutherland*, L. R. 3 C. P. 303; *Barnes v. Peters*, L. R. 4 C. P. 539; *Boon v. Howard*, L. R. 9 C. P. 277. Should lodgers be held not qualified to vote (see note (u) p. 82, *post*), then if the rooms occupied are not structurally severed, as where the separate rooms of a set of chambers are rented to separate tenants, each of whose rooms communicate with a vestibule which had an outer door leading to the landing on a public staircase, the occupants of the separate rooms had no right to vote: *Cuthbertson v. Butterworth*, L. R. 4 C. P. 523. But the tenant of the set of chambers does not lose his vote by subletting some of the rooms: *Smith v. Lancaster*, L. R. 5 C. P. 246. When residence in an official or other house is necessary or conducive to the official performance of the duty or service required, and is either expressly or impliedly made a part of such duty or service, there the relations of landlord and tenant are not created, and such official, or servant, has no right to vote: *Dobson v. Jones*, 5 M. & Gr. 112; *Clark v. Bury St. Edmund*, 1 C. B. N. S. 23; s. c. 26 L. J. C. P. 12. A toll collector occupying the toll house is not entitled to vote: *Brockville (McArthur's Case)*, Ho. E. C. 129. A sergeant of militia occupied a house close to where the arms, &c., were stored. The house was assigned to him by the colonel to look after the stores, and if he left it without permission,

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render to his landlord some portion of the produce (v) or

he would be guilty of a breach of discipline, and might be dismissed. A certain sum per week was deducted from his pay as occupier of the house: *Held*, not entitled to vote: *Fox v. Dalby*, L. R. 10 C. P. 285. But when, without any obligation to reside in a particular dwelling, an officer or servant chooses to occupy a house which is provided for him, the circumstance that he receives less salary or wages in consideration of the benefits he derives from occupying a house convenient for the discharge of his duty or service, or that he would have an allowance for rent or lodging money if he did not occupy it, will not prevent him from occupying as tenant, and having a right to vote: *Hughes v. Chatham*, 5 M. & Gr. 54. "There is no inconsistency in the relation of master and servant and that of landlord and tenant. A master may pay his servant by conferring on him an interest in real estate, either in fee, for years, at will, or for any other estate or interest, and if he do so the servant then becomes entitled to the legal incidents of the estate as much as if it were purchased for any other consideration. But it may be that a servant may occupy a tenement of his master's, not by way of payment of his services, but for the purpose of performing them, *required* to occupy in the performance of his contract to serve his master: *Per Tindal*, C. J., *Ibid*. Where a voter, after becoming insolvent, continued in the undisturbed occupation of the premises of which he was tenant: *Held*, that he was entitled to vote: *Dublin (Hyland's Case)*, Fal. & Fitz. 158; *Taunton (Cockram's Case)*, *Ibid*. 315; *Murray's Case*, Alc. Reg. Ca. 251. Where a voter is assessed as tenant, instead of owner, his right to vote is not affected: *Stormont (Blair's Case)*, Ho. E. C. 21. A person in charge of a lunatic's estate occupied the farms vacated by tenants of the estate, and in his account, passed before the Master in Chancery, entered his own name as tenant, and charged against himself the rent: *Held*, that he could not make himself tenant by his own act, and was not entitled to vote: *Burton v. Langham*, 5 C. B. 92; s. c. 12 Jur. 631. Children of a deceased tenant from year to year, who remain in possession, are co-parceners or tenants in common, and the tenancy continues as to them until a paramount title intervenes: *McIntyre v. McIntyre*, 1 P. E. I. 509. See note (z) and notes to ss. 3 and 4, *post*.

(v) Under an agreement by which A leased a farm to B, on condition of B delivering to him one-half of the wheat raised on it: *Held*, that A and B were not partners, but stood in the relation of landlord and tenant: *Haydon v. Crawford*, 3 U. C. O. S. 583. Where A put B into possession of 100 acres of land, and B covenanted to pay A a bushel of wheat for every acre cleared after he had been in possession three years: *Held*, that A might sue B for the value of the wheat as rent after such three years: *McNab v. McFarlane*, *Ibid*. 287. Where the owner of a farm agreed with B to work it on shares, and both parties were equally in possession of the whole farm: *Held*, that there was no demise creating the relation of landlord and tenant, and that the parties were occupants of the farm in common: *Oberlin v. McGregor*, 26 U. C. C. P. 460. A permitted B to occupy certain lands, on which, in lieu of rent, B. was to make improvements, but which

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of the revenues or profits of the property leased, in lieu of rent, as a person who pays rent in money therefor; (w)

"Occupant" (x) means a person in actual occupation of "Occupant."

were not defined: *Held*, that by the successive improvements, such as they were, the relation of landlord and tenant was created, although the improvements were not strictly in lieu of "rent;" *Workman v. Robb*, 28 Gr. 243, 7 A. R. 339. See the preceding note (u) to this clause; and notes to s. 3, *post*.

(w) See notes (t) to (x), pp. 33-39, and note (v) p. 83.

(x) "The law of occupancy is founded upon the law of nature. So as upon the first coming of the inhabitants to a new country, he that first enters upon such part of it and manures it, gains the property; so that it is the actual possession and manurance of the land which was the first cause of occupancy." *Vin. Abr.* "Occupant" H. Occupancy is only to supply a freehold: *Smartle v. Penhallow*, 1 Salk. 189. The term "occupant" applies to persons occupying Crown Lands, under licenses of occupation from the Commissioner of Crown Lands (R. S. O. c. 23, s. 15), and persons claiming under them by assignment (*Ibid.* s. 17), or by tax sale (*Ibid.* s. 18); or without such licenses, as squatters. A squatter who is in possession of land for his own benefit, has a title to support his vote: *Brough on Elections*, 12. An intruder upon Crown lands gains no estate or interest by his possession; and the Crown may grant the land as freely as if no such intruder were upon it, and the grantee of the Crown would, by force of his grant, be seised of an estate in possession in the eye of the law: *Doe Fitzgerald v. Finn*, 1 U. C. Q. B. 70. This law has been held to prevail where the occupants have been mere squatters, or where a party has gone into possession with a fair ground for expecting that his title would be confirmed: *Ibid.* 80. The actual possession of Crown lands entitles the party in possession to maintain trespass against a wrong-doer: *Harper v. Charlesworth*, 6 D. & R. 572. But to maintain trespass, the possession must be actual and continuous: *Henderson v. McLean*, 3 U. C. C. P. 42. A squatter in occupation of Crown lands by sufferance, but whose claim has not been recognized by the Crown, has no estate or interest in the lands occupied by him which would warrant the interference of the Court in partitioning such lands: *Jenkins v. Martin*, 21 Gr. 613. Persons jointly occupying the land with the owner, and having an agreement for a share in the crops, and who are in a position to compel the owner to carry out such agreement, may vote: *Stormont*, Ho. E. C. 21. They must have such interest in the land at the date of the last final revision of the assessment roll: *Ibid.*; *Re McCulloch and the Judge of Leeds and Grenville*, 35 U. C. Q. B. 452; or if such interest is parted with after such final revision, the voter must be a resident of the constituency at the time of the election: *South Grenville*, Ho. E. C. 163. The occupancy must be to the use and benefit of the party claiming the right to vote: *Brockville*, *Ibid.* 129. Where it is proved that an agreement exists (verbal or otherwise), that the son

real property otherwise than as "owner," "tenant," or

should have one-third or one-half the crops as his own, and such agreement is *bona fide* acted on, the son is entitled to vote: *Brockville (Caldwell's Case)*, *Ibid.* So where the owner has for some years given up the whole management of the farm to his son, retaining his right to be supported from the product of the place, the son dealing with the crops as his own, and disposing of them to his own use: *Ibid.* A clearly established course of dealing for years as to the management and disposition of crops, and acts done by the son in the management of the farm: *Held*, sufficient to establish an interest in the crops in the son, though the evidence of any original agreement or bargain be not clear: *Ibid.* If the evidence would warrant the jury in finding the crops to be the property of the voter, the son is rightly placed on the roll: *Ibid.* 7 C. L. J. 221. But where such crops could not be seized for such voter's debt he would not be entitled to vote: *Ibid. (Francis's Case)*, Ho. E. C. 129. In a milling business, where the agreement between the father and the son was that if the son would take charge of the mill and manage the business he should have a share of the profits, and the son in fact solely managed the business, keeping possession of the mill, and applying a portion of the proceeds to his own use: *Held*, that the son had such an interest in the business, and, while the business lasted, such an interest in the land, as entitled him to be on the roll: *Stormont (Bullock's Case)*, *Ibid.* 21. So, where the voter had been originally put upon the assessment roll merely to give him a vote, but by a subsequent arrangement with his father, made five or six years before the election, he agreed to support his father and apply the rest of the proceeds to his own support, it was held that if he had been put on originally for the purpose of giving a vote, and that was the vote now questioned, it would have been bad; but having been continued for several years after he really became the occupant for his own benefit, he was entitled to be on the roll: *Ibid. (Gore's Case)*. But the rule is different where father and son live together on the father's farm, and the father is in fact the principal, to whom the money is paid and who distributes it, and the son has no agreement binding on the father to compel him to give the son a share of the proceeds of the farm, or to cultivate a share of the land, and the son merely receives what the father's sense of justice dictates: *Ibid. (Eamon's Case)*. Or where a certain occupancy was proved on the part of the son, distinct from that of the father, but no agreement to entitle the son to a share of the profits, and the son merely worked with the rest of the family for their common benefit: *Ibid. (Raney's Case)*. Where the owner died intestate, and the estate descended to several children, only the interest of the actual occupants is generally to be considered: *Brockville (Leslie's Case)*, Ho. E. C. 129. Where the occupant is shown to be receiving the rents and profits, on account of a party interested, though not in actual possession, a mere liability to account is not to be considered: *Ibid.* 7 C. L. J. 221. The widow of an intestate owner continuing to live on the property with her children, who own the estate and work and manage it, should not, till her dower be assigned, be assessed; nor should any interest of hers be deducted from the whole assessed value, she not having the management of the estate: *Ibid.*

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"usufructuary," (y) in his own right, (z) or in the case of a married man, in his own right or in the right of his Right of wife.

reement (Gilroy's Case), Ho. E. C. 129. Where a husband had possession of property for which he was assessed as "occupant," and his wife as "owner," but the property belonged to his wife's daughters by a former husband, his vote was held good: *Ibid.* (Whaley's Case). Where, under an agreement between father and son, the son was to share in the crops, but it was in the father's discretion to determine the son's share, such son was not entitled to vote: *Ibid.* (Johnson's Case). Where father and son were in the occupation of property, the son as owner, and the father under an agreement "to have his living off the place," the father was not entitled to vote: *Ibid.* (Wiltse's Case). Where a vendor had conveyed and given possession of the property to a purchaser, and such purchaser afterwards, and before the final revision of the assessment roll, gave the vendor a license to occupy a small portion of the property, such vendor was not entitled to vote: *South Grenville (Noblin's Case)*, Ho. E. C. 163. A verbal agreement with an Indian to work the farm of such Indian, which was Indian lands, on shares, under which the defendant went into occupation, and had sown several acres with fall wheat; *Held*, that such agreement was illegal, and that the defendant was properly found guilty of misdemeanor under the Indian Act: *Reg. v. Hagar*, 7 U. C. C. P. 380. See note (s) p. 33, *ante*.

(y) In Quebec, there is also the occupation of real property by a *usager*. The difference between an occupant and a *usager* is this: the occupant enjoys all the products of the land occupied for his own benefit; the *usager* only those products which are required for himself and family, the rest goes to the owner. "A right of use is a right to enjoy a thing belonging to another, and to take the fruit thereof, but only to the extent of the requirement of the user and of his family:" *Civil Code L. C. s. 487*. See note (f) p. 20, *ante*.

(z) The occupancy defined by this clause excludes some occupations of less independence, where such occupations depend upon the performance of duties as a servant, such as the porter to a lodge, or the gardener occupying a dwelling in the garden: *Davis on Registration*, 17; or keeper of a town hall: *Clark v. St. Mary, Bury St. Edmunds*, 1 C. B. N. S. 23; s. c. 3 Jur. N. S. 645. Or such an occupation that possession would have to be given up when the employment ceased: *Ferrar's Case*, Alc. Reg. Ca. 248. Where, after a hiring as gardener at a salary and a right to occupy a house, the gardener behaved insolently towards his master: *Held*, that the master could dismiss him without giving notice, and that such gardener's right to occupy the house ceased with the termination of the service: *Fleming v. Hill*, 1 Russ. & Ches. N. S. 268. A clerk in a brewery occupying a house connected with the brewery in the capacity of a clerk, disqualified: *Re Gorman*, 1 Ir. L. R. 282. Likewise a bank officer occupying the bank premises: *Re Gillies*, 3 Cr. & Dix 374. See note (u) on p. 34, *ante*, and notes to ss. 3 and 4, *post*.

wife, (a) and who receives to his own use and benefit (b) the revenues and profits thereof ;

"Person."

"Person" (c) means a male person, (d) including an

(a) By reference to the latter part of the two subsections 5, of ss. 4 and 5 (p. 75) *post*, it will be found that the construction suggested in the latter part of note (p) p. 29, *ante*, is to some extent warranted where the husband is in actual possession as the *bona fide* occupant of real property belonging to his wife, and has been "for a year in the enjoyment of the revenues and profits thereof for his own use or for the use of his wife." This construction, however, is not entirely free from doubt, owing to the phraseology used: "*enjoyment of revenues and profits for the use of his wife*." Where the property is separate estate, the whole revenues and profits belong to the wife as if she were *sole*, or unmarried. But should the husband claim a proprietary right to his wife's property, the wife is entitled to an injunction restraining him from asserting any such right, or from interfering with her property: *Symonds v. Hallett*, 24 Ch. D. 346. And a married woman carrying on a business of her own, may obtain an injunction restraining her husband from interfering in her business, or removing any of her chattels; and she may also, under certain circumstances, have an injunction excluding her husband from the house: *Donnelly v. Donnelly*, 9 Ont. R. 673. But where the husband is not in the "actual occupation" of his wife's property, the above reasoning would not apply; and if, under those circumstances, the word "and" cannot be construed as "or,"—as the right to vote depends upon the voter's beneficial interest or estate in real property, it must follow that the property owned by a married woman in her own right, and as her "separate estate," must, like the property of a widow, or a spinster, be left unrepresented on the voters' list. And in deciding upon the construction of this part of the clause—as referred to in the latter part of the above note (p)—it must be remembered that, while recent legislation has enabled a married woman to hold her property free from the control of her husband, Parliament has not deemed it wise at present to alter the political status of married women. "It cannot be supposed that the statute by which the status of a married woman, with regard to the power to hold property, has been recognized and established, and which was passed *alio intuitu*, has, by a side wind, given them political rights:" *Per* Cockburn, C. J., in *Reg. v. Harrauld*, L. R. 7 Q. B. 363. The Married Woman's Property Act was not intended to extend, in any way, the political rights of women: *Per* Hannen, J., *Ibid*. "I trust the unanimous decision of the Scotch Judges, and our unanimous decision, will for ever exorcise and lay this ghost of a doubt, which ought never to have made its appearance:" *Per* Byles, J., in *Charlton v. Lings*, L. R. 4 C. P. 374. See further note (x) to s. 3 subs. 5, *post*.

(b) The word "use" has been construed to mean the beneficial enjoyment of property: 1 *Stephens on Elections*, 463. See note (n) p. 23, *ante*.

(c) A woman is not a "person" within the meaning of the Act, and cannot appeal from the decision of the Revising Barrister: *Wilson v. Salford*, L. R.

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4 C. P. 398. Women, being under legal incapacity, have no common law right to vote at Parliamentary elections, though possessed of the requisite property qualification: *Charlton v. Lings*, *Ibid.* 374. "Persons disabled from voting at elections are those who, holding freehold lands and tenements, either lie under natural incapacities, and therefore cannot exercise a sound discretion, or are so much under the influence of others that they cannot have a will of their own in the choice of candidates: of the former are women, infants, idiots, and lunatics; of the latter, persons receiving alms, and revenue officers:" *Heywood on Elections*, 159. Women are disqualified at common law in Ireland: *Hudson on Elections*, 159; and also in Scotland "by a long and uninterrupted custom:" *Brown v. Ingram*, 7 Sess. Ca. (3rd ser.) 281. In the United States, a female who possessed all the qualifications entitling a person to vote, except that she was not a male, voted at an election for a member of Congress. She was indicted and convicted for knowingly voting at such election without having a lawful right to vote: *United States v. Anthony*, 11 Blatch. 200. Though a woman has no common law right to vote at elections of members of Parliament, she appears to be capable of holding many public offices:—such as Queen: "Queen regnant is she who holds the crown in her own right," 1 *Bl. Com.* 219; also Marshall, Great Chamberlain, and Champion of England, 2 *T. R.* 397; Constable of England, 3 *Dyer*, 285b. Anne, Countess of Pembroke, held the office of hereditary Sheriff of Westmoreland, and exercised it in person. At the Assizes of Appleby she sat with the Judges on the Bench: 2 *T. R.* 397, note (a). Lucy, Countess of Kent, was Returning Officer, and signed the indenture and return of the member for the County of York in 1412. And in 1415, Margaret, widow of Sir H. Vavaseur, also acted and signed a similar indenture. So Lady Elizabeth Copley made the return for the Borough of Gattton in 1553, and again in 1555. Dame Dorothy Packington also acted as Returning Officer, and made the return of the two members for Aylesbury in 1572: *Prynne's Brev. Parl.* 152. And in 1628 the return of a member for Gattton was made by Mrs. Copley, *et omnes inhabitantes*: *Heywood on Elections*, 160. The opinion of the Judges was that a *feme sole*, if she has a freehold, may vote for members of Parliament: *Catharine v. Surrey*, cited 7 *Mod.* 264. Women, when *sole*, had a power to vote for members of Parliament: *Coates v. Lisle*, 14 *Jac.* 1, cited *Ibid.* 265. A *feme sole* freeholder may claim a voice for Parliament-men; but if married, her husband must vote for her: *Holt v. Lyle*, 4 *Jac.* 1, cited *Ibid.* 271. "The case of *Holt v. Lyle* is a very strong case:" *Per* Probyn, J., in *Olive v. Ingram*, *Ibid.* 267. "Whether women have not anciently voted for members of Parliament, either by themselves or attorney, is a great doubt. I do not know upon enquiry, but it might be found that they have:" *Per* Lee, C. J., in *Ibid.* "Possibly other instances may be found in early times, not only of women having voted, but also of their having assisted in the deliberations of the Legislature:" *Per* Bovill, C. J., in *Charlton v. Lings*, L. R. 4 C. P. 383. Votes given by women at a Parliamentary election in Canada, not struck off on the mere *prima facie* evidence of the poll book: *Halton*, (1844) Patrick's El. Cas. 59. Widows and spinsters were burgesses of Lyme Regis in 1577: 2 *Lud.* 13. "All *fiefs* were originally masculine, and women were excluded from the succession of them, because they cannot keep secrets:" *West on Peers*, 44, cited 7 *Mod.*

Exceptions. Indian, (e) and ex ; a person of Mongolian or

272. "A woman is excluded : military tenures and from councils *quia quæ audit reticere non potest*." *Wright's Tenures*, 28. A woman may be a commissioner of sewers, which office is judicial : *Callis* 250 ; and Clerk of the Crown in K. B. : 7 Mod. 270 ; governor of a workhouse : 2 *Ld. Ray*. 1014 ; sexton of a parish church in London : 2 *Str.* 1114 ; keeper of the prison of the gatehouse of the dean and chapter of Westminster : 3 *Salk.* 2 ; governess of a workhouse at Chelmsford : 13 *Vin. Abr.* 159 ; custodian of a castle : *Cro. Jac.* 18, 13 *Vin. Abr.* 159 ; constable at the Sheriff's Court : 2 *Hawk. P. C. c.* 10, s. 36 ; gaoler : 2 *T. R.* 397 ; overseer of the poor : *Ibid.* 395. Women who were housekeepers, and paid church and poor rates, were entitled to vote for a sexton : 2 *Str.* 1114. Women may vote for churchwardens : 23 *Gr.* 49. "It might be more reasonable that one or more churchwardens should be women than men ; one-half the congregation are likely to be women, and a female overseer would be able to watch over their conduct, to counsel and advise them, better than men." *Per* Proudfoot, V. C., *Ibid.* In municipal elections, spinsters and unmarried women who are rated for property are entitled to vote, but they lose that right on their marriage : *Reg. v. Harvald*, L. R. 7 Q. B. 361. Marriage is at common law a total disqualification, and a married woman could not, therefore, vote, her existence for such a purpose being entirely merged in that of her husband : *Ibid.* A *feme covert* can do no act to estop herself at law : *Per* Lord Kenyon, C. J., 7 *T. R.* 539. *Contra* in equity : 1 *Mac. & Gor.* 599. "The policy of the law thought women unfit to judge of public things, and placed them on a footing with infants ; by 7 & 8 Wm. III. c. 25, infants cannot vote ; and women are perpetual infants." *Per* Strange, Sol.-Gen., 7 Mod. 272. Under our present political system, the legislative, executive, and judicial functions of the government are carried on in the name of a woman : "Her Majesty &c., enacts," or "commands," &c. ; yet women, because of their sex, are said to be disqualified by the common law, as defined by Judges, from having any voice, or representation, in the process of legislation.

(d) The Interpretation Act, 31 Vic. c. 1 (D.) provides (s. 7, subs. 10) that words importing the masculine gender only shall include females as well as males. Under a similar provision in 13 & 14 Vic. c. 21 (Imp.), viz. : "words importing the masculine gender shall be deemed and taken to include females," the word "man" in the Representation Act of 1867 (Imp.) was held not to include women : *Charlton v. Lings*, L. R. 4 C. P. 374. "All doubt is removed where, in a similar connection, instead of the word 'man,' is found the expression 'male person :'" *Ibid.*

(e) The definition of Indian given in the "Indian Act," 43 Vic. c. 28, is : "first, any person of Indian blood reputed to belong to a particular band ; secondly, any child of such person." But such Indian must, by s. 11, subs. (c) *post*, have the property qualification there prescribed, and be "otherwise possessed of the qualifications entitling him to be registered on the list of voters," which are : (a) being of the age of 21 years ; (b) a subject of the

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Crown; and (c) not disqualified or prevented from voting. An Indian who is a British subject, and the owner of real estate to the statutory amount, may be elected Reeve of a municipality, though he has not been enfranchised, and though he receives, as an Indian, annual payments from the property of his tribe: *Reg. ex rel. Gibb v. White*, 5 Pr. R. 315. Indians in Ontario are subjects: *Ibid.* "The British policy is to recognize the Indians as subjects, and hold them amenable to the laws as such:" *Morse on Citizenship*, 131. "An Indian residing within the United States is not a 'person,' nor a 'foreign citizen,' nor a 'subject,' within the meaning of the Constitution:" *Ibid.* 132, 238. "Indians have no political rights in the United States; they cannot vote at the general elections, nor hold office:" *Bouvier's Law Dict.* 787. Representatives in Congress are apportioned according to the whole number of persons in each state, "excluding Indians not taxed:" *Pomeroy's Cons. Law*, 134. Indians who maintain their tribal relations are distinct political communities, capable of self-government, not as foreign states, but as domestic dependent nations; and the relation of the United States to them is that of a guardian to a ward: *Ibid.* But where the members of the tribe scatter themselves among the citizens of the United States, they are merged with the mass of citizens owning complete allegiance, and thereby become citizens: *Ex parte Reynolds*, 18 Alb. L. J. 8. Mississippi, in 1829, extended to Indians all the privileges, immunities, and franchises of white persons: 3 *Kent's Com.* 392 n. An Indian who was not a Christian, and who had no knowledge of any ceremony binding a person to speak the truth, but who had a full sense of the obligation to do so, and who, with his tribe, believed in a Supreme Being, and was sworn as a witness in the usual way: *Held*, that his evidence was admissible: *Reg. v. Pah-mah-gay*, 20 U. C. Q. B. 195. Indians are disqualified, by 38 Vic. No. 2, B. C., and by s. 11 of this Act, from voting in British Columbia.

(f) The question whether a proposed voter is "of Mongolian or Chinese race" may, if disputed, have to depend on the evidence of experts in ethnological science; and perhaps a reference to standard works on Ethnology, few of which are agreed in their definitions. "The Mongolian race, properly so termed, is generally considered as most strongly exemplifying the broad faced or pyramidal form of the skull. This character is more fully displayed in the heads of the Esquimaux, and some other nations who wander along the shores of the Icy sea:" 1 *Pritchard's Nat. Hist. of Man*, 212. "It would be absurd to term the Chinese Esquimaux; and it cannot be more correct to name the Esquimaux and Chinese, Mongolians:" 1 *Pritchard's Phys. Hist. of Mankind*, 259. "Mongolian embraces nations of dissimilar features, among whom, however, there is a common link of resemblance that justifies the classification for generic purposes. Hence we group together the Chinese, the Kamtschatkans, and the Kalmucks:" *Nott & Gliddon's Types of Mankind*, 321. "The only race of the old world with which any connection [of the American Indians] has been reasonably conjectured is the Mongol; but their languages alone should decide against any such alliance:" *Ibid.* 275. Dr.

"Farm"
occupied by
owner.

"Farm" (g) means land actually occupied by the owner thereof and not less in quantity than twenty acres; and "farmer" means such owner thereof; (h)

"City."

Except Hull
and St.
Hyacinthe,
in Quebec.

"City" means a place incorporated as a city or recognized as such, by or under any Act of the Parliament of Canada or of the Legislature of the Province in which it is situate; except the cities of Hull and St. Hyacinthe, in the Province of Quebec, which, for the purposes of this Act, shall be held to be towns;

"Town."

"Town" means a place incorporated as a town or recognized as such, by or under any Act of the Parliament of Canada or of the Legislature of the Province in which it is situate;

"Incorporated village."

"Incorporated village" means a place incorporated as a village or recognised as such, by or under any Act of the Parliament of Canada or of the Legislature of the Province in which it is situate;

"Parish."

"Parish" means any tract of land which is generally reputed to form a parish, whether such tract has or has

Latham classes as *Mongolidæ* the aborigines of Asia, Polynesia, and America; and classifies "Indians" as "American *Mongolidæ*:" *Latham's Varieties of Man*, 14, 320. "The American race bears a striking resemblance to that of the Mongol nations:" *Humboldt's Amer. Resear.* "Dr. Charles Pickering, the ethnologist of the American Exploring Expedition, groups the American with the Asiatic Mongolian:" *Dr. Wilson's Prehistoric Man*, vol. 1, p. 329. "Mongolia and China each illustrates an important ethnological phenomenon. Cheekbones that project outwards, a broad and flat face, a depressed nose, an oblique eye, a somewhat slanting insertion of teeth, a scanty beard, an undersized frame, and a tawny or yellow skin, characterize the Mongol:" *Latham's Ethnol. Brit. Colonies*, 93. Chinamen are disfranchised in British Columbia by 38 Vic. No. 2, B. C.

(g) The definitions here given have an important bearing upon the construction of the clauses defining the right of "farmers' sons" to vote. See note (l) *post*, and the clauses there referred to.

(h) This limitation of twenty acres is apparently taken from R. S. O. c. 10, s. 2, subs. 4.

not been wholly or in part originally erected into a parish by the civil or ecclesiastical authorities, and which now exists as a territorial division ;

"Father" includes grandfather, stepfather and father-in-law, and "mother" includes stepmother and mother-in-law ; (i)

"Farmer's son" means any male person not otherwise qualified to vote, and being the son of an owner and actual occupant (j) of a farm, (k) and includes a grand-son, stepson or son-in-law ;

"Farmer's son."
Son of owner of farm.

"Son of an owner of real property," (l) in cities and towns means any male person not otherwise qualified to vote and being the son of an owner and occupant of real property, and includes a grandson, stepson or son-in-law ;

"Son of owner of real property ;"
In cities and towns ;

(i) In the absence of registration, the civil status of a person can be proved by the sayings of his parents, and by witnesses : *Motz v. Moreau*, 7 L. C. R. 147. The status of a family in Quebec, being indivisible, cannot be recognized by certain members, and disputed by other members of the same family : *Scott v. Paquet*, 4 L. C. J. 149, 11 L. C. J. 289, 17 L. C. R. 283.

(j) "Owner and actual occupant," i. e. the owner who is in the actual occupation of the farm. S. 4, subs. 7, read in connection with the above definition, and with the definition of "farm," given above, shews that it applies only to the sons of "owners," and not to the sons of "tenants" and "occupants," of farms.

(k) The word "farm" is used in subs. 7, of s. 4, defining the qualifications required of farmers' sons. See also note (g) *ante* p. 44, and the note (l) following.

(l) In the clauses defining "farmers' sons," and "owners' sons," the words describing the father are the same, viz. : "owner and occupant," or "actual occupant." But in the clauses defining the qualifications required of such sons as voters, there is a slight, but unimportant, difference as to residence ; the words, when referring to "owners' sons," being : resident *upon* such property continuously *with* his father, (see s. 3, subs. 7 (a) (b) and proviso, s. 4, subs. 8 (a) (b) and proviso) ;—and when referring to "farmers' sons," being : resident continuously *on* the farm of his father, (see s. 4, subs. 7 (a) (b)). But the proviso to the latter subsection, and the definition of the word "farm," shew that the intention of the Act is that both classes of sons must be residents *with* their fathers *on* the farm actually occupied by their fathers respectively.

In counties. and in counties means any male person not otherwise qualified to vote and being the son of an owner and occupant of real property other than a farm, (*m*) and includes a grandson, stepson or son-in-law;

"Electoral District."

"Electoral district" means any place (consisting of or comprising any city, town, county, township, parish, district or municipality, or portion thereof) in Canada, entitled to return a member to the House of Commons of Canada; (*n*)

"Election."

"Election" means an election of a member to serve in the House of Commons of Canada;

"Voting;"
"to vote."

"Voting" and "to vote" mean voting and to vote at the election of a member to serve in the House of Commons of Canada;

"List of voters."

"List of voters" (*o*) means the list of registered voters, to be prepared and revised under the provisions of this

(*m*) The only distinction between the qualifications for the sons of the two classes of owners (1) of farm, and (2) of real, property, is that a "farm" must be a property of at least twenty acres. The two classes have substantially the same qualifications. The Ontario and Nova Scotia Acts confer the franchise upon the sons of the owners and tenants of real property, according to the assessed value of such property.

(*n*) A definition substantially the same, but without the words in parenthesis, may be found in the Dominion Controverted Elections Act, 1874, 37 Vic. c. 10, s. 4.

(*o*) The Voters' List, when completed and revised, is the foundation of all proceedings with a view to elections to the House of Commons, and is declared to be "binding on any Judge or other tribunal appointed for the trial of any petition complaining of an undue election or return of a member to serve in the House of Commons." See ss. 10, 31, 39, *post*. It is therefore essential to the validity and fairness of an election, that the persons named on the Voters' List, and voting at the election, should possess the proper Parliamentary Franchise in the Electoral District concerned; and this result can only be arrived at by a careful and exhaustive examination of the Voters' List, after it has been published by the Revising Officer under this Act. Facilities are provided for obtaining printed copies of the proposed list, and time is given in each polling district (five weeks after the publication and

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Act in each year, for each sub-division or polling district of an electoral district, when finally revised, (*p*) except when the first general list or an unrevised list (*q*) is especially mentioned or referred to ;

posting up of the first lists), for a careful investigation of every vote which may be gained, or lost, by entry on, or omission from, the list, preparatory to the final revision. And this examination is all the more important, and will demand due care and investigation, for the purposes of claim or objection, as the Voter's Lists to be used at elections for the House of Commons are, by this Act final, for the purposes of such election, except as to disqualifications, arising subsequent to the revision by the Revising Officer, under s. 11. Under the Ballot Act (Imp.), the register of voters as settled by the Revising Barrister is conclusive not only upon the Returning Officer, but also on the Election Judge, except as to persons who have an inherent incapacity to be electors, such as peers, women, persons disqualified by holding certain offices, and persons convicted of crimes, or the like: *Stowe v. Jolliffe*, L. R. 9 C. P. 734.

(*p*) The proceedings incident to the Final Revision of the list of voters, after the "preliminary revision" hereinafter noted, are: (1) Printing a sufficient number of copies of the preliminary or unrevised list of voters for each polling district. (2) Publishing the same by posting copies in three conspicuous public places in the polling district to which it relates, and by delivering copies to persons applying and paying for the same. (3) Appending thereto a notice *G* fixing a time and place for the final revision of each list. (4) Delivering by registered letter to each of the persons and officers named in s. 24, one copy of each list relating to the electoral district, and to the Member of the House of Commons, and the unsuccessful candidate at the last election for the electoral district, ten copies of each list. (5) Publishing a notice of the time and place of the final revision in a newspaper (s. 25) in the electoral district—such day to be not less than five weeks from the posting up of the lists as aforesaid, and the place as indicated in s. 26. (6) Holding open Court at the time and place named, and hearing and disposing of applications, objections and complaints, and attesting any changes, additions or erasures in the list. (7) Certifying the same after revision (form *C*) in duplicate, one copy to be retained by the Revising Officer, and the other copy transmitted to the Clerk of the Crown in Chancery at Ottawa. (8) The Clerk of the Crown in Chancery, on receipt of the same, to insert a notice in the then next *Canada Gazette* in the form *H*. On and after the publication of such notice, "the persons whose names are entered on the said lists as voters shall be held to be duly registered voters in and for such electoral district, subject to correction or amendment by the judgment on appeal."

(*q*) The proceedings incident to the Preliminary Revision of the "unrevised list" are: (1) Procuring copies of assessment rolls, and lists of voters, prepared and revised under Provincial statutes relating thereto, or copies of the last poll books where there are no such lists. (2) Preparing therefrom, and from such other information as can be obtained, an alphabetical list, for the

"Actual
value;"
"value."

"Actual value" or "value" (*r*) means the then present market value of any real property, if sold upon the ordinary

divisions mentioned in s. 15, of the persons entitled to be registered as voters under the Act, and containing the particulars specified in said s. 15. (3) Printing the lists after certifying as in form *C*. (4) Publishing the same by posting one copy in the Municipal or Parochial Clerk's office, and by mailing two copies to the Member of the House of Commons and the unsuccessful candidate at the last election for such electoral district, and to the other persons and officers named in ss. 16, 17; if there be no municipal divisions, then the list is to be posted in one or more public places, and mailed to officers corresponding to those above-named. The lists sent to public officers to be posted up by them in conspicuous places in their offices. (5) Publishing a notice in form *D* of the time and place for the preliminary revision in one or more newspapers (s. 18). (6) Holding a sitting, as mentioned in the notice, on a day not less than four weeks after the publication of the list, and proceeding publicly to the preliminary revision of the lists based upon the evidence and information adduced in support of claims, and correcting the lists on such evidence and information, but not objections to names, which are to be merely noted, on the list, attesting any addition or change, and appending names of claimants whose claims are not admitted, and then certifying the said lists. (7) Dividing each municipal division into polling districts containing not more than 200 voters each. (8) Preparing an alphabetical voters' list for each of such polling districts, noting the names objected to, and the claimants whose claims are not admitted.

(*r*) The Assessment Acts of the various Provinces direct their Assessors to estimate property for the purposes of taxation and electoral qualifications, as follows: *Ontario*, R. S. O. c. 180, "Real and personal property shall be estimated at their actual cash value, as they would be appraised in payment of a just debt from a solvent debtor:" s. 23. "True actual value:" s. 192. *Quebec*, C. S. L. C. c. 24, s. 56, "True and real value." *Nova Scotia*, R. S. N. S. c. 21, s. 21, "Actual cash value." *New Brunswick*, C. S. N. B. c. 100, s. 4, "Full cash value, as if appraised as belonging to the estate of a deceased person;" and in 37 Vic. c. 4, s. 29, N. B., "True and marketable value." *Manitoba*, 47 Vic. c. 11, s. 248, form 6, M., "True, actual value." The determination of the value of real property for the purposes of the qualification or disqualification of voters will cause more embarrassment to an impartial judicial mind than any other question under this Act. There is nothing men so much differ about as the value of property. "People may very honestly differ on a question of opinion; and men's opinions on such subjects are very materially affected—more so than perhaps they are aware—by the point of view from which they consider it. A man who is impressed with a consideration of how much the thing in question will bring, will entertain a widely different opinion from him who simply looks at it as a thing to be purchased with a view to profit, whether by the employment of it, or by selling it again:" *Per Draper, C. J., in McCuaig v. Unity Ins. Co.,*

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terms of sale, in respect of which any person claims to be qualified, whether as owner, tenant, occupant, or farmer's or other owner's son, as determined by the revising officer, (s) Determined by Revising Officer.

9 U. C. C. P. 85. "The average value of land is an undefined term:" *Per Burns, J., in London v. Great Western R. W. Co.*, 17 U. C. Q. B. 267. A forced sale for cash is not a proper mode of determining the value of an estate: *Fawcett v. Burwell*, 27 Gr. 445. "It is the price it will bring in the market at the time it is offered for sale. One may value his own property from the very preciousness which ownership and possession give the house and home of most men. Nor can we weigh the estimates of strangers as to the value of a man's house and land in scales more nicely balanced; for, allowing all credence to the honesty of those who give their opinions, they must be more or less speculative, according to the standpoint of view from which which they are taken. If these estimates of value by the witnesses for the plaintiff were weighed in scales nicely balanced, there could be but indefinite justice. No proper valuation of a house can be made without seeing it inside:" *Per Wilson, J., in Squire qui tam v. Wilson*, 15 U. C. C. P. 284. A valuation of a house by a surveyor who did not enter the house valued, is not a proper valuation: *Cotter v. Metropolitan Railway Co.* 10 Jur. N. S. 1014; s. c. 10 L. T. N. S. 777. Little reliance is to be placed on the evidence of surveyors in a contest as to value, where they know beforehand on which side their evidence is to be used: *Waters v. Thorn*, 22 Beav. 547. One who holds himself out as a valuer of property is bound to bring to the performance of the duty he undertakes a knowledge of the general rules applicable to the subject: *Jenkins v. Betham*, 15 C. B. 168; s. c. 1 Jur. N. S. 237. A witness's interest in neighbouring property, as owner or as a buyer or seller, his experience and previous qualifications as a fair and just valuator of property, his reasons for his estimate of value, and his reliability as a witness, must be considered. And when to these considerations there may be added the strong bias of a political partisan, in forcing up or pulling down values for the purposes of a vote, the difficulty of groping in a quagmire of political evidence for the "actual value" of property, may be likened to chasing a will o' the wisp over a morass. The opinions expressed by judicial and other persons, support this view. "The Franchise opens a boundless field for the manufacture of votes; and electioneering consciences are very elastic:" *Per Serjeant Cox, formerly M.P. for Taunton, in Cox and Grady on Elections*, xli. "The manufacture of votes will be conducted by rival parties as zealously hereafter as ever it has been before:" *Ibid.* xxxii. "I found that a good deal of perjury was committed in the election cases that came before me. There were a good many witnesses whom I did not believe, and who, I thought, were wilfully stating what was not true:" *Per Blackburn, J., Committee on Parliamentary and Municipal Elections (1869)*, 520. See *Merssey Docks v. Birkenhead*, L. R. 8 Q. B. 445; L. R. 9 Q. B. 84.

(s) The value of the premises rated under the Act (Imp.) means the real value, and not the value rated on the rate-book; and the Revising Barrister

Assessment
Roll to be
prima facie
as to value.

upon the best information in his possession at the time of such revision; (t) Provided, that the assessment rolls as finally revised for municipal purposes, (u) shall be *prima facie* evidence (v) of the value of such property;

"Real
property."

"Real property" means a lot or portion of a lot

may go behind the rate-book and decide what the real value is: *Cooke v. Butler*, L. R. 8 C. P. 256. The proper criterion of clear yearly value within the Act (Imp.) is the fair annual rent, without making any deduction on account of repairs or insurance: *Colvill v. Wood*, 2 C. B. 210; s. c. 10 Jur. 336. What is such clear yearly value is a question of fact for the Revising Barrister, and with his decision the Court will not interfere: *Coogan v. Luckett*, 2 C. B. 182; s. c. 10 Jur. 141. The assessment of premises should proceed on the estimate, not of the rent actually paid for the premises by the occupier, but of the rent at which they might reasonably be expected to let from year to year: *Hayward v. Brinkworth*, 10 L. T. N. S. 608.

(t) The expression, "best information in his possession at the time of such revision," was in the original draft of the bill, and before the proviso was added making the assessment rolls *prima facie* evidence of the value of property for the purposes of the franchise. The assessment of property has been held to be in the nature of a judgment, and being *prima facie* binding by this Act, may be looked at as a verdict of a jury, which should only be increased, reduced, or set aside, by a judicial proceeding of which the parties concerned have had due notice, and on such evidence as would be properly receivable in such a proceeding. It would therefore seem proper to construe the word "information" as meaning "evidence."

(u) "The process of assessment is in the nature of a judicial proceeding." *Per Strong, J., Nicholls v. Cumming*, 1 S. C. R. 427. Notice of the assessment to the party assessed is essential to validity of the assessment roll: *Ibid.* 393; in order that such party may protect himself against any improper valuation of his property: *Ibid.* 420. "The process of assessment is finally completed when the Clerk certifies the roll as having passed the Court of Revision, until which time the assessment is not perfected:" *Ibid.* 431.

(v) Where the law presumes the affirmative of any fact, the negative of such fact must be proved by the party averring such negative: *Williams v. East India Company*, 3 East 192. Disputable presumptions of law may always be overcome by opposing proof. The law defines the nature and amount of the evidence which is sufficient to establish a *prima facie* case, and to throw the burthen of proof on the other party; and if no opposing evidence is offered, the jury are bound to find in favor of the presumption: 1 *Taylor on Evidence*, 115. If a disputable presumption of law is in favor of an affirmative allegation, the party who supports the negative must call witnesses to rebut the presumption: *Ibid.* 335.

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or other portion or sub-division of real property, or a house, store, office or building of any description whatsoever, or any portion thereof, (w) situate upon real property and forming part thereof ;

"Section" means a section of this Act ;

"Section."

(w) The following decisions have been given under a similar clause in the Imperial Act. A "wind mill" stood on a piece of ground enclosed by a fence large enough to clear the wings. It was fixed on a post upon pattens in a foundation of brick work. Nothing was shown as to the occupant's title: *Held*, vote good: *Bedfordshire (Marshall's Case)*, 2 Lud. 441. A "cow house," or "stable," built of stone, conveniently placed for the occupation of the land, is a "building": *Whitmore v. Bedford*, 5 M. & Gr. 9; s. c. 7 Jur. 1064. "Suppose goods were put into this stable, it would then become a warehouse; and if those goods were sold therein, it would become a shop:" *Per Maule, J., Ibid.* So a structure, the lower part used as a stable for cattle and the upper part for the servant of the occupier: *Nunn v. Denton*, 7 M. & Gr. 66. A "stone building" with three sides—used for milking a cow and storing hay: *Gilham v. Harris*, 13 L. T. N. S. 763. A "linhay" with a crib in it: *Mason v. Harris, Ibid.* 764. A "shed" placed against a paling, and formed of six posts supporting a tarpaulin for roof: *Watson v. Cotton*, 5 C. B. 51; s. c. 11 Jur. 1106. A "wooden structure" used for storing potatoes: *Powell v. Farmer*, 18 C. B. N. S. 168. A "stone building" used for storing guano: *Norwich v. Harris*, L. R. 1 C. P. 155. A "lime-kiln" excavated in the cliff, without a cover or support: *Lyme Regis (Genge's Case)*, Bar. & Aus. 485. But not a "shed" made of boards, put up by a political agent to manufacture a vote, though used for storing agricultural implements: *Powell v. Boraston*, 18 C. B. N. S. 175. *Quere*, if a "pig-stye" built of boards let into the ground can be described as a building which can be "occupied" within the statute: *Powell v. Farmer*, 11 L. T. N. S. 736. The following have been held to be buildings in Scotland: a church; a stall in a market; a wooden stable, but removable; a summer house in a garden; a barn: *Nicolson on Elections* (Scot.) 97. But seats in a parish church, a ruined ice house, and a wooden cool house in a garden, have been rejected; while pig-sties, a rope-walk, and man-pits, have been taken into view as subsidiary buildings: *Ibid.* The following were held not to be "dwelling houses" by an election committee in Canada: A shanty not plastered and without a chimney: *Niagara* (1841) Patrick's El. Cas. 46. A house on an unenclosed acre lot, without foundation or chimney, only clapboarded, and unfit for renting: *Ibid.* A small building erected for the voter at the expense of the candidate: *Ibid.* The occupation in law continues if the house is pulled down for rebuilding: *New Windsor*, X. & O. 153. Or if the house has been burnt: *Lyme Regis (Cozen's Case)*, Bar. & Aus. 463; the voter continuing to hold the site: *Whitley v. McCleane*, 4 L. T. N. S. 899. See, as to the right of lodgers, note (u) p. 82, *post*.

‘The
Provinces.’

“The Province” means that Province of the Dominion in which the revising officer in the case or matter referred to is appointed;

“The
Revising
Officer.”

“The Revising Officer” means any revising officer appointed for the place referred to in the context, and competent to do the thing required;

Time:
Sundays and
holidays
excluded.

2. If the time limited by this Act for any proceeding or for the doing of any act under its provisions expires or falls upon a Sunday, (x) or day which is a public

(x) At common law Sunday was included in the calculation of time. *Rawlins v. West Derby*, 2 C. B. 72. Where, under a statute, the last day for giving notices of appeals from the list of voters happened to be a Sunday: *Held*, that such notices might legally be given on that day; the service is not void by statute or common law: *Ibid.* A notice mailed so as to be received on Sunday is good: *Colville v. Lewis*, *Ibid.* 60. Where notice of an appeal from a conviction was required to be served “within six days after” the conviction, the conviction being on Monday, 2nd May, a notice of appeal served on Monday, 9th May, was too late: *Reg. v. Justices of Middlesex*, 7 Jur. 396. Nomination papers were required to be sent in after the 14th and before the 26th March, or if such day was a Sunday, then the day following: *Held*, that the delivery of a nomination paper on Sunday, 2nd March, might be treated as a delivery on the Monday following: *Reg. v. Poor Law Commissioners*, 1 Jur. N. S. 251; see also 4 E. & B. 314. “The reason of Sunday not being a day of business is the decent observance of the Sabbath:” *Per Eyre, C. J.*, in *Mesure v. Britten*, 2 H. Bl. 617. A notice of writ quit given on Sunday is valid: *Sangster v. Noy*, 16 L. T. N. S. 157. R. S. O. c. 119, chapt. 1 mortgages are to be registered within five days after execution. A chattel mortgage executed on the 12th was registered on the 18th, the 17th being Sunday: *Held*, that Sunday counted as one of the five days, and that the registration was too late: *McLean v. Pinkerton*, 7 A. C. 490. It is irregular to make an affidavit of debt, or to issue a writ of Sunday: *Hall v. Brush, R. & J. Dig.* 3683. A writ issued on a Sunday is nullity: *Carrall v. Foulkes*, 5 D. & L. 590; and the date of the writ is amendable: *McKinnon v. Proud*, 1 P. E. I. 474. Service of process on Sunday is absolutely void: *Taylor v. Phillips*, 3 East 155. So is service of a notice to produce: *Hughes v. Budd*, 4 Jur. 150. Service of a notice on Good Friday is good: *Clarke v. Fuller*, 2 U. C. Q. B. 99. Where the seven days limited for issuing a *capias* expired on a Good Friday: *Held*, that it might issue on the earliest practicable day thereafter: *Hughes v. Griffith*, 13 C. B. N. S. 3. Where the last day for doing an act which is to be done by the Court, falls on a Sunday or holiday, it may be done on the next practicable day thereafter: *Ibid.* As the Courts do not sit on Sunday, no judicial act can

the Dominion holiday or holiday under "The Interpretation Act," (y) ⁸¹ Vlo. c. 1 the time so limited shall be extended to, and such act ^(D). may be done upon the day next following which is not a Sunday or such a holiday as aforesaid.

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done until the following Monday: 1 *Ch. Arch.* 142. Where an election petition was to be filed twenty-one days after the receipt of the return by the Clerk of the Crown in Chancery, exclusive of holidays: *Held*, that in the computation of the twenty-one days Good Friday, Easter Sunday, and Easter Monday were excluded: *West Toronto*, 5 Pr. R. 394, 31 U. C. Q. B. 499. See also, *Gibson v. Michael's Bay Lumber Co.*, 7 Ont. R. 746.

(y) The expression "holiday" includes Sunday, New-Year's Day, the Epiphany, the Annunciation, Good Friday, the Ascension, Corpus Christi, St. Peter and St. Paul's Day, All Saint's Day, Conception Day, Easter Monday, Ash Wednesday, Christmas Day, the Birthday of the reigning Sovereign, Dominion Day, and any day appointed by proclamation for a general fast or thanksgiving. The general rule for the computation of time fixed by statute is, unless there is something in the statute to the contrary, to hold the first day excluded and the last day included: *Rex v. Justices of Cumberland*, 4 N. & M. 378. The question whether, in computing time from an act or event, the day is to be included or excluded, may be thus stated: Where the act done from which the computation is made is one to which the party again to whom the time runs is privy, the day of the act done may reasonably be included; but where it is one to which he is a stranger, it ought to be excluded: *Lester v. Garland*, 15 Ves. 243. Where an act is required by a statute to be done so many days "at least" before a given event, the time must be reckoned excluding both the day of the act and that of the event: *Reg. v. Justices of Shropshire*, 8 A. & E. 173. Similarly where the statute prescribes so many "clear days:" *Watson v. Eales*, 23 Bay. 294; and in computing such, Sunday is excluded: *Re Crooks*, 1 Ch. Ch. 304. "Our law rejects fractions of a day more generally than the civil law does. The effect is to render the day a sort of indivisible point, so that any act done in the compass of it is no more referable to any one, than to any other, portion of it; but the act and the day are co-extensive; and therefore the act cannot properly be said to be passed until the day is passed:" *Per Sir W. Grant*, M. R., 15 Ves. 257. Judicial proceedings are to be considered as taking place at the earliest period of the day on which they are done: *Wright v. Mills*, 4 H. & N. 483; s. c. 5 Jur. N. S. 771. Also the Royal Assent to Acts of Parliament: *Converse v. Michie*, 16 U. C. C. P. 167. Time appointed for the sitting of the Court is mean time where the Court sits, and not Greenwich time: *Curtis v. March*, 3 H. & N. 866. Where the watch of a Returning Officer was used on the first day to open and close the poll, and to open it on the second day, without objection as to its correctness, the time marked by his watch may be properly taken as the correct time to close the poll: *Reg. ex rel. Lutz v. Hopkins*, 7 U. C. L. J. 152.

QUALIFICATION OF VOTERS IN CITIES AND TOWNS.

Persons to be
voters in
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3. Every person shall, upon and after the first day of January in the year of Our Lord one thousand eight hundred and eighty-six, be entitled to be registered on the list of voters for any electoral district or portion thereof in Canada, being a city or town or part of a city or town, or including any city or town or part of a city or town, and when so registered to vote at any election for such district, (z) if such person—

Age.

(1.) Is of the full age of twenty-one years, (a) and is

(z) The various definitions of voters to whom the right of voting has been extended by this, and some of the Provincial Franchise Acts—ranging from one to nine classes of voters—indicate that an elaborated and refined classification of voters, with a minimised and vicarious grasp at a property qualification, is peculiar to advanced modern political legislation. If this clause had been made to end before the words “if such person;” or if to the “male persons not [hitherto] otherwise qualified to vote,” had been added the sons of “tenants” and “occupants” of farms, and of other real property, it might easily be conceded that this elaborated and refined classification, with its intricate and technical qualifications as to the title, value, occupancy, income, employment, race, residence, and relationship, of its eight classes of voters, would be found unnecessary; for then the Electoral Franchise would be coming squarely back to its pristine quality, and might have touched bottom in “Manhood Suffrage;”—which was the common law suffrage of England up to 1429, the time its Parliament, in defining “what sort of men shall be choosers,” “made an inroad on the liberties of the people” by requiring the standard of a voter’s political intelligence to be gauged by his possession of a 40s. freehold. “The common law placed all elections in the hands of the people:” *Hudson on Elections*, 30. “It is not clear whether any landed or freehold qualification was requisite to entitle a person to vote at elections before this statute” (8 Henry VI. c. 7, 1429): *Simeon on Elections*, 13. The preamble of the statute of 1429 recites, with aristocratic exclusiveness, that “many county elections have now of late been made by very great, outrageous, and excessive numbers of people, dwelling within the said counties, of the which most part was of people of small substance and of no value, whereof every of them pretended a voice equivalent with the most worthy knights and esquires.” “This was the first statute which required a qualification of landed property, or, to speak in a manner more strictly constitutional, which deprived persons in a very low and dependent situation of the exercise of the privilege of voting:” *Simeon on Elections*, 59. See note (a) *ante* p. 13, and latter part of note (b) p. 16.

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not by this Act, (b) or by any law of the Dominion of Canada, (c) disqualified or prevented from voting, (d) and ^{And not disqualified.}

the anniversary of a person's birth: *Anon.* 1 Salk. 44. So if he were born on the 1st February at eleven at night, on the last day of January in the twenty-first year, he is of age, from the first moment of that day: *Hudson on Elections*, 160; and he would be qualified to vote on that day: *Rogers on Elections*, 182. A person born on the 16th August, 1725, who died on the 15th August, 1746, was held to have lived to attain the age of twenty-one years: *Toder v. Sansam*, 1 E.o. P. C. 468. If, previous to the revision of the voters' list, one objected to as a minor comes of age, his name will not be struck off the list: *Powell v. Bradley*, 18 C. B. N. S. 65. And although a minor when his residence, or his occupation of premises, commences, it is sufficient if he is of full age when he applies to be placed on the list of voters: *Ibid.* 11 L. T. N. S. 602. Legal incapacity applies to the time of registration: *Lord Rendlesham v. Haward*, L. R. 9 C. P. 250. The date of the qualification of an elector is that of the election list; and it is at the time of the making of the list that the qualification should exist: *Re Kamouraska Electoral Lists*, 3 Q. L. R. 308. An objector must proceed to prove personal incapacity affirmatively, but he may be allowed to do so from a cross-examination of the voter or his witnesses: *Elliott on Electors*, 343.

(b) The persons disqualified by this Act are described in s. 11, *post*.

(c) No judicial interpretation has yet been given of the expression, "any law of the Dominion of Canada disqualifying or preventing persons from voting;" but it may be paraphrased to mean: the common and statute law in force in the Dominion of Canada under which persons are disqualified or prevented from voting at elections. The general statutes and rules governing the introduction of English law into Canada are as follows: By the Imperial Act, 14 Geo. III. c. 83, s. 11, the criminal law of England, as then (1774) existing, was made applicable to the Province of Quebec (now the Provinces of Ontario and Quebec): *Reg. v. Coote*, L. R. 4 P. C. 599. By the Upper Canada Act, 32 Geo. III. c. 1 (R. S. O. c. 92), the law of England as then (1792) existing was adopted in all matters of controversy relating to property and civil rights in Upper Canada. "We are bound by the law of England where there are no enactments to the contrary, and the *lex Parliamenti* is a part of that law:" *Per Draper, J.*, in *Reg. v. Gamble and Boulton*, 9 U. C. Q. B. 554. By the Upper Canada Act, 40 Geo. III. c. 1 (S. U. C. c. 94), the criminal law of England, as it stood on the 17th September, 1792, was established as the criminal law of Upper Canada: *Reg. v. Mercer*, 17 U. C. Q. B. 602. In countries originally settled by British subjects, the common and statute laws of England previously in force, and applicable to their situation and condition, are in force: 2 *P. Wms.* 75. In countries so settled, there being no preceding laws in force to contest the superiority with them, the common and statute laws of England applicable to their

condition are in force: *Clark's Col. Law*, 7. In countries acquired by conquest or cession, the former laws remain in force until provision is made for their government by the Crown (which has power of legislation by Order-in-Council), or by Parliament: *Mills's Col. Cons.* 19. Where, by Royal Commission, a new Constitution has been granted to a colony, which Commission has generally directed that the law administered in its Courts of Justice shall be in all things as nearly agreeable to the law of England, the law of England is the rule in cases not specially provided for: *Clark's Col. Law*, 7, n. Where such a Constitution is granted to a colony acquired by conquest, the Crown, by such grant, precludes itself thereafter from the exercise of sole legislative authority over such colony, and such grant is irrevocable: *Chapman v. Hall*, 20 How. St. Tr. 239; s. c. Cowp. 204. The King, without the concurrence of Parliament, has full power of legislation in a conquered country; but such legislation is subordinate to the King's own authority in Parliament; he cannot change fundamental principles: *Per Lord Mansfield, C. J.*, in *Ibid.* The common law of England relating to Parliamentary elections is in force in Ontario, and applies to elections for the House of Commons: *Cornwall*, Ho. E. C. 547. "As soon as Canada ceased to belong to France the law of Canada ceased to exist, and the law of England came in:" *Per Smith, J.* in *Corse v. Corse*, 4 L. C. J. 314. (But see 14 Geo. III. c. 83, s. 8.) The only English law introduced into Lower Canada was that relating to the tenure of lands: *Steward v. Bowman*, 3 L. C. R. 211; and to wills: *Migneault v. Malo*, L. R. 4 P. C. 123. The election laws of the former Province of Canada are in force in Quebec, under ss. 41 and 129 B. N. A. Act, as respects Dominion elections: *Willett v. DeGrosbois*, 17 L. C. J. 293. The whole of the English common law is recognized as in force in Nova Scotia, excepting such parts as are obviously inconsistent with the circumstances of the country; while, on the other hand, none of the statute law is received except such parts as are obviously applicable and necessary: *Uniacke v. Dickson*, James, N. S. 287. In deciding the question of the extension and adaptation of the English statute law, we have no very definite rule to guide us: *Per Parker, J.* in *Doe d. Hannington v. McFadden*, Bert. N. B. (2nd ed.) 277. The question depends on the consideration whether it be a local law adapted solely to England, or a general regulation of property equally applicable to any country in which English law prevails: *Per Chipman, C. J.* in *Kavanagh v. Phelon*, 1 Kerr, N. B. 472. It is considered that New Brunswick, Nova Scotia, and Prince Edward Island were established as settlements soon after their discovery in 1497: 1 *Burge's Col. and For. Law*, xxxiv. The laws of Prince Edward Island are the laws of England in force at the time of its acquisition: *Ibid.* 464. The English common law was not introduced into [Manitoba and] the North-West Territories by the treaty of cession from France to England, nor by the Imperial Proclamation of 1763, establishing Provinces; but only those portions of the common law which were introduced by the Charter of the Hudson's Bay Company: *Connelly v. Woolrich*, 11 L. C. J. 197. The English common law prevailing in the Hudson's Bay Territories does not apply to natives who are joint occupants of the territories, nor does it supercede or abrogate within such territories the laws, usages, and customs of the aborigines: *Ibid.* The laws in force in Manitoba have been as follows: Up to

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1862, the law of England at the date (1670) of the Hudson's Bay Company's Charter. In 1862 the law of England at the date of Her Majesty's accession, was introduced. In 1864 the law of England as it stood on the 7th January, 1864, was declared to be the law of Assiniboia: *Keating v. Moises*, 2 Man. R. 47. Since some of the foregoing decisions, the Dominion Controverted Elections Act, 37 Vic. c. 10, s. 4, has enacted that the common law of Parliament, in so far as the same relates to acts in reference to elections which are recognized by it as corrupt practices, shall be applicable to elections for the House of Commons.

(d) The disqualifications from voting are those arising from: (1) age, (2) sex, (3) mental condition, (4) alienage, (5) crime, (6) rank, and (7) office. (1) Men within the age of one and twenty years: 4 Co. Inst. 5; and they are also expressly disqualified by various statutes: *Hudson on Elections*, 159. (2) Women: *Charlton v. Lings*, L. R. 4 C. P. 374; *Brown v. Ingram*, 7 Sess. Ca. (Scot.) 231. See note (c) p. 28. (3) Lunatics. "There are four manners of *non compos mentis*: (a) Idiot or fool natural. (b) He who was of good and sound memory and, by the visitation of God, has lost it. (c) He who is sometimes of good and sound memory, and sometimes not. (d) By his own act, as a drunkard:" *Beverley's Case*, 4 Co. R. 124. Lunatics so long as they have not understanding; but in lucid intervals they are entitled to vote: *Hudson on Elections*, 160. The vote of "a melancholy man and scarce *compos mentis*" was held good: *Wendover (Bening's Case)*, 13 Com. J. 42; "being '*scarce compos mentis*' admits that he was just in a situation to give his vote:" *Heywood on Elections*, 166. One "so disordered in his senses that he could not repeat the oaths:" *Held*, disqualified: *Oxfordshire*, 27 Com. J. 177; so also, one "incapable of declaring his vote:" *Malmesbury*, 20 Com. J. 77. See other cases in *Hudson on Elections*, 160. One deaf, and dumb, and blind. If he can signify by signs the purpose for which he has come to the poll, and the obligation of an oath, should be allowed to vote: *Rogers on Elections*, 184. A voter who, being intoxicated, did not know for whom he voted, cannot afterwards change his vote: *Monmouth (Llewellyn's Case)*, K. & O. 413. A voter, so drunk that he was incapable of knowing what he did, was brought to the poll between two supporters, and voted: *Held*, vote good: *Wigan (Lyon's Case)*, Fal. & Fitz. 695. (4) Aliens. The common law considers an alien as incapacitated to vote, because he labors under a personal incapacity in that he cannot be elected or appointed to any public office whatever: *Heywood on Elections*, 157. The House of Commons, on the 22nd December, 1698, resolved *nem. con.* "that no alien, not being a denizen or naturalized, hath any right to vote in elections of members to serve in Parliament: 12 Com. J. 367. An alien is the child of a foreign father, born in a foreign country, or the child of a naturalized father, born in a foreign country before the naturalization of the father: *Lely & Foulkes on Elections*, 51. (5) Criminals. A convict felon is disqualified: *Colchester (Jeffries's Case)*, 1 Peck. 508. The attain of felony is a disqualification: *Great Grimsby*, 1 Peck. 509, n. But the Crown may grant a pardon: 32 & 33 Vic. c. 29, s. 126 (D.); and enduring the punishment adjudged is equivalent to a pardon: *Ibid.* s. 128. And a felon, after pardon, may be elected: *Male on Elections*, 35, n. A person convicted of felony, after enduring the punish-

ment, is in law no longer a felon: *Leyman v. Latimer*, 3 Ex. D. 15, 352. But where the person convicted of felony escaped before the period of his punishment had elapsed, it was held that, although the period limited for his term of imprisonment had expired, he remained subject to the disabilities created by his conviction and sentence: *Tipperary (Mitchell's Case)*, 3 O'M. & H. 41. By 2 Geo. II. c. 24 (Imp.) persons convicted of bribery, or perjury, or subornation of perjury, are thereafter disqualified from voting. Whether this, as part of the English criminal law, applies to Canada, has not yet been judicially determined. Disqualification for crime is a strictly legal objection, to be supported by strict legal proof; and nothing less than conviction will disqualify: *Hudson on Elections*, 166. There is no objection to the vote of a man in custody upon conviction for a misdemeanor: *Rogers on Elections*, 191; other than bribery, perjury, or subornation of perjury: 2 Geo. II. c. 24 (Imp.) But a *habeas corpus* will not be granted to a prisoner in custody to enable him to vote: *Ex parte Jones*, 2 A. & E. 437. During the time such person is in prison he is not *sui juris*: *Per Erle*, C. J. in *Powell v. Guest*, 18 C. B. N. S. 72. Imprisonment on civil process is not a disqualification: *Ibid.* Nor is outlawry on civil process: *Rogers on Elections*, 192. But outlawry in criminal cases, as in treason or felony, is a disqualification: *Elliott on Electors*, 272. Bribery at elections was always a crime at common law: *Rez v. Pitt*, 3 Burr. 1338. By the common law of Parliament, a person bribed to give his vote at an election is rendered incompetent to vote at that election: *Orme on Elections*, 111; but not at a subsequent election: *Ibid.* 112. Treating for the purposes of influencing an election was always an offence at common law: *Hughes v. Marshall*, 2 C. & J. 118. *Quære*, whether the Treating Act, 7 Wm. III. c. 4, is in force in Ontario: *Dundas*, Ho. E. C. 205. By 37 Vic. c. 9, s. 98 (D.) bribery, treating, undue influence, personation, hiring vehicles to convey voters to the poll, or payment of voters' travelling expenses, are "corrupt practices." And by s. 104, any person, other than a candidate, found guilty of any corrupt practice "in any proceeding in which, after notice of the charge, he has had an opportunity of being heard," is disqualified for eight years after being so found guilty. *Quære*, whether jurisdiction to try any such charge of disqualification, like other charges of disqualification of a voter, are within the powers of the Revising Officer. There is no authority given by the Election Acts to the Election Judge to subject a person "other than a candidate" to disqualification: *South Oxford*, Ho. E. C. 238. The report of a Judge trying an election petition does not disqualify a voter for corrupt practices: *Bewdley*, 1 O'M. & H. 175. "The Act speaks of 'an opportunity of being heard,' and I think that does not merely mean that kind of opportunity which a witness has who is called up upon the spur of the moment, and who is subject to cross-examination; but it means an opportunity of being heard when he has had a fair warning of the charge, and is asked to meet it, and be heard by himself or his counsel. If the election depends upon a single vote, I will reserve the case for the Common Pleas, and the matter will be determined before the next registration revision, as it is more convenient that the Revising Officer should know what they are going to do." *Per Blackburn*, J., *Ibid.* 176. Before disqualification for corrupt practices attaches to a voter he must have been found guilty, after he has had an opportunity of being heard; the disqualifi-

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(2.) Is a British subject by birth (e) or naturalization, (f) Allegiance.
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cation attaches after conviction: *South Huron*, 29 U. C. C. P. 301; s. p. *Dufferin*, 4 A. R. 420, Ho. E. C. 529. (6) Peers of Parliament are disqualified from voting by common law: *Earl Beauchamp v. Madresfield*, L. R. 8 C. P. 245. So is an Irish Peer: *Lord Rendlesham v. Haward*, L. R. 9 C. P. 252. And also a Scotch Peer: *Nicolson on Elections* (Scot.) 24. Being bound to serve the state in a capacity incompatible with the character of representative of the people, is a disqualification: *Male on Elections*, 37. Legislative Councillors of Upper Canada were held not to have a legal or constitutional right to vote at elections: *York*, 1829, 10 U. C. C. P. 16; Jour. Leg. Assem. U. C. 1829, p. 72. (7) Officers. By Act 22 Geo. III. c. 41 (Imp.) certain officers of Excise, Customs, Postmasters and other Post Office officials, and officers employed in conveying the mail to or from foreign ports, are disqualified from voting. *Quære*, whether this statute of 1781 is in force in Canada. It was not referred to in the following case: "Postmasters in Ontario were prohibited from voting at Parliamentary elections, not by any general election law, but by the General Post Office Act, as a departmental regulation:" *Per* Hagarty, C. J. in *Savage v. Deacon*, 22 U. C. C. P. 441. A penal statute, in restraint of the exercise of a franchise, and imposing severe disabilities, ought to be construed very strictly: *Per* Lord Abinger, C. B. in *Gooday v. Clark*, 2 C. M. & Ros. 279. If a person is subject to any disability which does not appear by the roll, or by the list, such as an alien, or an imbecile, or a felon, his name will be struck off on the revision of the lists: *Re Kamouraska Electoral Lists*, 3 Q. L. R. 308.

(e) The tests for determining who is a natural-born subject are: 1st. His parents must, at the time of his birth, have been under the actual obedience of the Crown. 2nd. The place of birth must have been within the dominions of the Crown: and 3rd. The time of birth must be considered: *Broome's Cons. Law*, 41. And all children born out of the King's allegiance, whose fathers, or grandfathers by the father's side, were natural-born subjects, are also deemed natural-born subjects themselves: *Heywood on Elections*, 156. The children and grandchildren of natural-born British subjects, though born in a foreign country, are not aliens, and are capable of transmitting real estate in Nova Scotia: *Salter v. Hughes*, Oldr. N. S. 409. Inhabitants of a conquered country, when received under the King's protection, become subjects of the Crown: *Chapman v. Hall*, Cowp. 104. So, on the cession of Canada, when the King of England became King of Canada, the natives of Canada became his subjects: *Donegani v. Donegani*, 3 Knapp, P. C. 84. Children of aliens, born within the dominions of the King, are natural-born: *Calvin's Case*, 7 Co. Rep. 18. "The law doth superinduce that civil hereditary quality upon the blood of the son of an alien, by his birth in England, though when he took it from his [alien] father and mother it was void of that quality:" *Per* Sir Matthew Hale, C. J. in *Collingwood v. Pace*, 1 Vent. 427. In England the inheritable capacity is the test of a person's being a natural-

born subject: *Plowden's Jura Anglorum*, 479. Children born in a country of which their parents are not subjects, and while their parents are temporarily sojourning there, or in *itinerare*, are natural-born subjects of that country, and may become entitled to a double nationality: *Lynch v. Clarke*, 1 Sand. Ch. 583. A child born of Canadian parents in the United States, during his mother's temporary sojourn there, is a citizen of the United States: *Munro v. Merchant*, 25 Barb. N. Y. 333; and he would also be a subject of the native country of his father: *Ludlam v. Ludlam*, 31 Barb. N. Y. 483. An English ship, public or private, on the high seas, is deemed English territory: *Broom's Cons. Law*, 42. There is no difference between an English ship and the soil of England; an English ship on the high seas may be considered as a floating island: *Forbes v. Cochrane*, 2 B. & C. 464. Children born on a ship in the open sea are considered as born in the territory of the nation to which the ship belongs: *Vattel's Law of Nations*, 102. A person born on board an English ship, being within the protection of our law, will owe obedience to our Sovereign: *Broom's Cons. Law*, 42. If any of the King's ambassadors in foreign nations have children there of their wives, being English women, by the common law of England the children are natural-born subjects, and yet they are born out of the King's dominions: *Calvin's Case*, 7 Rep. 18; Cro. Car. 601. And such were inheritable before the statute 7 Anne, c. 5, but the statute makes it clear: 2 *Vin. Abr.* 265. Such children must be legitimate: *Shedden v. Patrick*, 1 Macq. H. Lds. 535; s. p. *Guyer v. Smith*, 22 Md. U. S. 239. The son of an Irish peer, although born in France, of a French mother, is a natural-born subject: *Lord Trimelston's Case*, 64 Lds. Jour. 93. And a son so born may be elected to Parliament: *Dundalk*, 1 P. R. & D. 92. A person born in New York in 1830, the son of a British subject, who had emigrated from Ireland a short time previously, and who came to Canada a year or two after his birth, held to be a British subject: *Reg. ex rel. McVean v. Graham*, 7 U. C. L. J. 125. A natural-born subject does not lose his rights by residing in a foreign country, or by holding office there, and his son, being within 4 Geo. II. c. 21, is a British subject: *Doe dem. Hay v. Hunt*, 11 U. C. Q. B. 367. A natural-born subject continuing to reside in the United States after the treaty of 1783: *Held*, he thereby lost his status as a British subject, and he and his children became aliens: *Doe dem. Patterson v. Davis*, 5 U. C. O. S. 494. But see also, *Sutton v. Sutton*, 1 Russ. & My. 663, and *Stewart v. Howe*, 6 Dict. of Dec. (Scot.) 4649. Where the children of a person who remained in the United States after 1783, came to Canada in 1792 and 1794, and took the oath of allegiance, the disability was held to be removed by U. C. Act, 9 Geo. IV. c. 21: *Montgomery v. Graham*, 31 U. C. Q. B. 57. When a voter was born in the United States, of British-born subjects, his father and grandfather being U. E. Loyalists, he was held to be a British subject: *Stormont (Place's Case)*, Ho. E. C. 21. Where a voter swore he was born in the United States, but that his parents were British subjects: *Held*, that his statement was that he was born in the United States of British parents: *Lincoln (2) (Mulrennan's Case)*, *Ibid.* 500; s. p. *Brockville*, *Ibid.* 129. An Englishman (A), who went to the United States after the treaty of 1783, and became a citizen of, and had taken the oath of allegiance to, the United States, thereby abjuring his allegiance to the Crown of Great Britain, who held office and voted there,

married an American woman, and had a son (B) born there, who resided there until his death in 1835, and who left a son (C, grandson of A), also born in the United States: *Held*, that the grandson (C) was, by virtue of the 13 Geo. III. c. 21, a British subject: *Fitch v. Weber*, 6 Hare, 57; s. c. 12 Jur. 76. See also, *Barrow v. Wadkin*, 24 Beav. 327; *Sharpe v. De St. Sauveur*, L. R. 7 Ch. 343. The privileges conferred by the statutes in question upon the children and grandchildren of British-born subjects are the privileges of such children and grandchildren, and not of the parent, conferred upon them for the benefit of the state itself: *Per Wigram, V. C.*, 12 Jur. 76. And such grandson may vote at elections: *Lincoln (2) (Andrew's Case)*. The status of British-born subjects which is conferred on children and grandchildren born abroad of natural-born British subjects is a merely personal status, and is not transmissible to their descendants: *DeGeer v. Stone*, 22 Ch. D. 243. A natural-born subject may be a citizen of the United States for the purposes of commerce: *Wilson v. Marryatt*, 8 T. R. 31. By 13 Geo. II. c. 7 (Imp.) Foreign Protestants residing for seven years in any of His Majesty's Colonies in America, and not absent for more than two months at one time during such seven years, and who take and subscribe the oaths and declarations required by the 1 Geo. I., shall be deemed natural-born subjects: see also, 20 Geo. II. c. 44. And by 2 Geo. III. c. 25, Foreign Protestants who shall serve in the Royal American Regiment, or as Engineers, in America for two years, and who shall take and subscribe the oaths and declarations required by 1 Geo. I., shall be deemed natural-born subjects. Under that Act W applied to have his name entered on the register of voters. He admitted he was a German by birth, but that he had become a British subject by service in the British Army in Egypt and the Peninsula, and in England, and by his holding a pension from the British Government: *Held*, that not having served in a military capacity in British America, he was not entitled to be entered as a voter: *Weberstadt's Case*, 1 Stephens on Elections, 368; even though he had taken the oath of allegiance on entering the army: *Christensen's Case*, *Ibid.* 370. The statutes regulating naturalization of foreign seamen serving on British ships under this provision are: 6 Anne, c. 37; 13 Geo. II. c. 3; 22 Geo. II. c. 45; 20 Geo. III. c. 20. An alien who has served on board an English man of war, for four years, in time of war: *Held*, to be a natural-born subject under 13 Geo. II. c. 3: *In re Gnauld*, 32 Beav. 385. "We must presume the resident and assessed inhabitants of this country to be British subjects, till something is shewn to the contrary from which the Court can determine they are aliens:" *Per Robinson, C. J.*, in *Reg. ex rel. Carroll v. Beckwith*, 1 Pr. R. 284. "A person born in any part of the British Empire, even if an alien, is a British subject by right of birth; as also is he whose father, or grandfather by the father's side, is a British subject, although he be himself born in a foreign country; saving the exceptions resulting from special laws of the Empire:" *Civil Code L. C.* s. 20.

(f) The statutes relating to naturalization in Canada are as follows: 31 Vic. c. 66, D. (1868): Aliens domiciled on the 22nd May, 1868, or who shall thereafter come to Canada, and shall reside continuously therein for three years, and take and subscribe the oaths of allegiance and residence, and who take

proceedings before the Court of Quarter Sessions as mentioned in the Act, thereby become British subjects. 34 Vic. c. 22, D. (1871): (a) Aliens who, prior to the first January, 1868, had taken the oaths of allegiance and residence required by the Naturalization Laws, are admitted to the privileges of natural-born subjects. The evidence shall be the certificate of the Justice before whom the oaths were taken, or the oath of the party in the form prescribed. (b) Aliens domiciled on the 1st July, 1867, and still residents, who take and subscribe the oath of allegiance and residence as provided in the Act, shall be entitled to the privileges of British birth. The oaths so taken are to be filed with the Clerk of the Peace, who shall file the same, and issue to the party a certificate of naturalization. The Naturalization Act, Canada, 1881 (in force 4th July, 1883, see 17 *Canada Gazette*, 2), provides that: (a) Aliens who, prior to 1st January, 1868, had taken the oaths of allegiance and residence required by the laws of the Provinces now forming the Dominion, shall be admitted to the privileges of British subjects; the certificate of the Judge, &c., before whom the oaths were taken to be evidence of their having been so taken. (b) Aliens domiciled in the various Provinces and Territories on the dates of the admission of each of such Provinces and Territories into Confederation, and who are still residents in Canada, shall be entitled to the privileges of British birth on taking the oaths of allegiance and residence, and filing them of record in the Courts named in s. 43; and a certificate of the same shall be *prima facie* evidence of naturalization. (c) Aliens who, within five years immediately preceding the taking of the oaths, have resided in Canada, or been in the service of the Government of Canada, or of any of the Provinces, for three years, and who intend, when naturalized, to reside in Canada, or to serve under such Governments, may take the oaths of residence, or service, and allegiance, procure a certificate (form B), which is to be read in open Court, and, if not controverted, filed of record. Thereupon such alien is to be entitled to a certificate of naturalization, and to all the political and other privileges of a British subject (s. 17). The Act also contains provisions for the expatriation and repatriation of British subjects. The modern doctrine of allegiance, partially recognized in the above Act, may be said to be based upon membership of the society which constitutes the nation; that those who compose that society are bound to be loyal to the public authority which executes the civil government of the nation; and that, being so constituted and recognized as a nation, it may determine upon what terms and conditions those who are alien to the society may be admitted members and entitled to the political franchises or privileges of the nation. "The more liberal views of modern times seem to recognize a right in every freeman to elect, not merely his place of domicile, but his sovereign, or government, and, with his person, transfer his allegiance also." *Per Draper, C. J., in Reg. v. McMahon*, 26 U. C. Q. B. 195. The English Naturalization Act of 1870 (33 Vic. c. 14), has also varied in many important particulars the common law doctrines respecting allegiance. "Naturalization is the act by which the rights, privileges, and immunities of citizenship are conferred upon a person born an alien." *Cooley's Cons. Law*, 77. The judgment of the Court that an alien has been admitted to citizenship is conclusive: *Stark v. Chesapeake Ins. Co.*, 7 Cranch. U. S. 420. The act of the Court admitting a citizen is a judgment of that Court, and the Supreme Court

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of the United States cannot look behind it, and inquire on what testimony it was pronounced: *Spratt v. Spratt*, 4 Peters, U. S. 393. The production of the certificate of naturalization is sufficient proof of naturalization, without showing compliance with all the requisites of the law. The judgment of a Court admitting an alien is final and conclusive: *Ritchie v. Putnam*, 13 Wend. 524. S was objected to as an alien. The evidence in support of the objection was that of a witness who proved that he had obtained letters of denization for the voter: *Held*, vote good: *Middlesex (Solomon's Case)*, 2 Peck. 117. In practice, great difficulty is found in procuring evidence to prove an individual an alien: *Elliott on Electors*, 265. "We must presume the resident and assessed inhabitants of the country to be British subjects till something is shown to the contrary, from which the Court can determine they are aliens. It is not sufficient to swear that certain voters are aliens without giving particular evidence to show that they *were* aliens, and *how* they were aliens, as by having been born in a certain place named, out of the allegiance of the British Crown:" *Per Robinson, C. J. in Reg ex rel. Carroll v. Beckwith*, 1 Pr. R. 284. The Chief Clerk of the Alien Office produced the declaration of alienage under the Alien Act, 33 Geo. III. c. 4, made by the voter, and a memorandum of the license granted him under the statute: *Held*, vote bad: *Middlesex (Barbre's Case)*, 2 Peck. 118. The brother of the voter proved that he was a native of Bordeaux, and ten years older than the voter; that the voter was born there; that his father's family were there; that the voter came to England twelve years before and had not, to the knowledge of the witness, been naturalized, or received letters of denization: *Held*, evidence not sufficient to establish alienage against the voter: *Reading (Barthe's Case)*, Fal. & Fitz. 553. The evidence produced to prove alienage was that of a brother of the voter, and of another witness, who swore that they had known him in Germany, and afterwards in England. It was contended that there was no proof that the parents were not British subjects: *Held*, vote good: *Bedford (Levi's Case)*, P. & K. 147. The voter testified that he was born in France, but that he had voted at the election in question. No other evidence was adduced: *Held*, that, as voting without naturalization was a criminal neglect or fraud, and constituted a misdemeanor, the legal presumption was that, having voted, he was naturalized: *People v. Pease (Rivinet's Case)*, 30 Barb. 588; in appeal, 27 N. Y. 45. The presumption of innocence, where one who is alien born has voted at an election, will prevail over the counter presumption that he is still an alien: *Brightly on Elections*, 413: *Spragins v. Houghton*, 3 Ill. 377. "If every naturalized citizen must always be prepared with his proofs to maintain the grounds upon which he obtained his papers in all Courts and places in which they may be brought in question, the boon of citizenship, which is so liberally bestowed, would be hardly worth possessing:" *The Acorn*, 2 Abbott U. S. R. p. 434. Evidence that a petitioner in an election case had lived in the United States, without showing that his parents were American citizens, was held insufficient to establish alienage: *Prescott*, Ho. E. C. 1. An alien who came to Canada in 1850, and who had taken the oath of allegiance in 1861, but who had taken no proceedings to obtain a certificate of naturalization, was held not qualified to vote: *Brockville (Bacon's Case)*, Ho. E. C. 129. Nor was an alien whose father had taken the oath of allegiance on obtaining the patent for his land qualified to

Ownership.

(3.) Is the owner of real property (g) within any such

vote: *Ibid* (*Healey's Case*). Certain aliens took the oaths of allegiance and residence before a J. P. of a town, but such oaths were administered in an adjoining township within the same county: *Held*, that under the Alien Act of 1871, (D.) the justice was acting ministerially, and not judicially, and that the oaths were properly administered: *Lincoln* (2) (*Johnson's Case*), Ho. E. C. 500. Where evidence was given of parol admissions made by voters some years before the election, that they had been born in a foreign country, and also evidence that since such admissions they had voted at prior elections, and had sworn to the voter's oath as being British subjects by birth or naturalization: *Held*, (1) that the oath at the polls could not be treated as testimony, not having been given in any judicial proceeding; (2) that such oath only stated the result of certain legal facts; (3) there was therefore no presumption of naturalization sufficient to rebut the continuance of the original status of alienage: *Ibid*. (*Shenck's Case*). Where it was alleged that certain aliens voted illegally, parol evidence is admissible to show that their naturalization papers were fraudulently, or irregularly, issued or procured. If the act of pretended naturalization was, in fact, the act of the Clerk alone, and not, in a proper sense, the act of the Court, it would be a monstrous doctrine to hold that the certificate, bearing the Clerk's signature, was conclusive. Such a rule would permit the party committing the fraud to protect himself, by his own fraudulent certificate: *McCrary on Elections*, 29. See further, *Westminster*, 12 Com. Jour. 367; *Southampton*, 22 Com. Jour. 445; and note (e) p. 59.

(g) See notes (d) to (i) pp. 18-34, and cases there cited, as to the definition of "Owner of real property." The term "owner," having no definite meaning in law, may refer to owners having the whole or partial interests in real estate: *Hopkins v. Provincial Ins. Co.*, 18 U. C. C. P. 74. Owner includes a person in possession of land and claiming title as purchaser: *McDougall v. McMillan*, 25 U. C. C. P. 75; and that notwithstanding the land may be subject to a vendor's lien: *Chatillon v. Canadian Mutual Fire Ins. Co.*, 27 U. C. C. P. 450. The word "proprietor" has a less extensive meaning than owner, and may be construed as a possessor having some right in the land: *Brown v. Grand Trunk R. W. Co.*, 24 U. C. Q. B. 350. A deed conveying lands in fee simple to A, reserved to the grantor's "own use, benefit, and behoof the occupation, rents, issues, and profits of the said above granted premises," for and during the term of the grantor's life: *Held*, a conveyance in fee simple; *sed quare*, whether the reservation was void, or whether only the reservation passed subject to the life estate: *Simpson v. Hartman*, 27 U. C. Q. B. 460. A person possessed of two separate properties, (rent charges) in the same county, neither of which alone would give the necessary qualification to vote, but which together would be sufficient to qualify, is entitled to claim the two properties as giving him the necessary qualification as a voter: *Wood v. Hopper*, 1 C. P. D. 192. But not where the properties are in separate counties: *Beaver v. Watson*, 1 Colt. 268.

city or part of a city, of the actual value of three hundred Cities, \$300.

Conveyances made for the purpose of qualifying votes at an election, by splitting freeholds, are a fraud on the law of Parliament, on the same principle as in ordinary cases is included in the term fraud on the common law: 1 *Stephens on Elections*, 416. Conveyances and agreements made for the purpose of giving a temporary qualification, being against public policy, are void: *Langlois v. Baby*, 10 Gr. 358. Such conveyances must fall within the same category as a conveyance to enable a man to sit in Parliament, but intended to convey no beneficial interest: *Per Spragge, V. C., Ibid.* What is against public law is against public policy: *Per VanKoughnet, C., Ibid.* 11 Gr. 1. See also, *Emes v. Barber*, 15 Gr. 679. Conveyances which are not meant to convey a real interest in land, but only a pretended and fictitious interest, and made only for the purpose of multiplying voices at an election, are void: *Alexander v. Newman*, 2 C. B. 122; s. c. 10 Jur. 313. The 7 & 8 Wm. III. c. 25, s. 7 (Lord Somers's Act), provides that all conveyances of any messuages, lands, tenements, or hereditaments, in order to multiply voices, or to split or divide the interest in any house or lands among several persons, to enable them to vote at elections to serve in Parliament, are void and of none effect. See also, 10 Anne, 23; 18 Geo. II. c. 18, s. 5. It was thought beneficial, where such baneful practices were daily practised, to promulgate the doctrine of the common law to sheriffs and other officers, to whom the duty of conducting an election was trusted, and to give it the additional weight and solemnity of a legislative declaration: *Per Tindal, C. J. Ibid.* 315. Before the Act Lord Somers held that the making of votes by splitting freeholds by fraudulent conveyances, or conveyances not made *bona fide* on good consideration, were void by the common law: *Onslow v. Bailij of Haslemore*, cited 10 Jur. 314. It is further defined to be where a qualification, whether from estate, office, or other cause, is conferred or taken for the purpose of voting at an election for a particular candidate or interest: 1 *Stephens on Elections*, 416. It is an offence at common law known as "occasionality," or "splitting votes," and may be of two kinds: (1) That which does not contain what is called legal fraud, yet is deemed to be a fraud upon the law of Parliament, viz., where that to which the right of voting is attached is obtained sincerely and *bona fide*, but upon the eve of a particular election, and for the express and only purpose of enabling the person who acquires it to give a vote at that election. (2) The second kind of occasionality is so connected with fraud that they are convertible terms. It consists of an illusory and pretended grant, for the purpose of voting merely, of that which in fact never passes from one party to the other: *Ibid.* 417; *Rogers on Elections*, 177. A fraudulent conveyance, made for the mere purpose of conferring a vote, is void only to the extent of preventing the right of voting from being acquired, but is valid and effectual, as between the parties, to pass the interest: *Phillpotts v. Phillpotts*, 10 C. B. 85. The executors of a grantor were estopped from pleading that the deed was made for the purpose of multiplying votes: *Ibid.* Where a claimant admitted that he had given no consideration for the property, and that the deed had

Towns, \$200. dollars, (h) or within any such town or part of a town, of

been prepared by an electioneering agent: *Held*, that the conveyance was colourable, and did not confer a qualification: *Re Foster*, 1 Cr. & Dix (Ir.) 77. But where there were no circumstances tending to show fraud the claim was allowed: *Re Coulter*, *Ibid.* 215, n. The object of increasing the number of freeholders at an election is not an object in itself against law, or morality, or sound policy; on the contrary, the larger number of persons enjoying the elective franchise has been held by many to be beneficial to the constitution: *Per Tindal*, C. J., 10 *Jur.* 315. One W G contracted with A for the purchase of a house, and afterwards sold it to B and five others in equal shares. A conveyed direct to B and the five others, the purchase money being paid through W G, whose object was to increase the number of voters. B and the others purchased *bona fide*. They knew, however, they were to gain votes in the constituency, but there was no stipulation that they were to vote in any particular way, or in support of any particular interest: *Held*, that to make the conveyance void, the seller must be a party or privy to the illegal object of the conveyance; that W G was not the seller, for it did not appear that he had anything to convey: *Marshall v. Bown*, 7 M. & Gr. 188; s. c. 8 Scott N. R. 889. See also, *Hoyland v. Bremner*, 2 C. B. 84. A conveyance of land by one vendor to several purchasers, for a *bona fide* consideration, is valid, although the avowed object of the vendor is to multiply, and that of a purchaser to acquire, the right of voting in a constituency: *Alexander v. Newman*, 2 C. B. 122; *Beawick v. Ashworth*, *Ibid.* 152. Conveyances made void by 7 & 8 Wm. III. c. 25, are void at common law: *Riley v. Crossley*, 2 C. B. 146; s. c. 10 *Jur.* 316. Where the Revising Barrister held that a conveyance was void only on the ground that it was made for the purpose of multiplying voices, but did not find that there was fraud in fact, his decision was reversed: *Ibid.* See also, *Thorniley v. Aspland*, 2 C. B. 160. Where the father of a voter conveyed certain lands to him and his brother, in consideration of natural love and affection, and although it appeared that one object was to make provision for the sons, the principal object was to entitle them to vote; and that the father occupied the land since the date of the deed, and paid no rent to his sons. The Revising Barrister did not find, either way, whether the transaction was fraudulent: *Held* (1) that, as the Revising Barrister had formed no conclusion on the question of fraud, the Court would not infer it; and (2) that the law acknowledged the consideration of natural love and affection, in the case of a conveyance to a child, to be as good, to raise a use, as a pecuniary consideration between strangers: *Newton v. Hargreaves*, 2 C. B. 163; *Newton v. Moberley*, *Ibid.* 203; *Newton v. Crowley*, *Ibid.* 207. A conveyance of property by a father to his son, to give him a qualification to vote, is not invalid, but is a bounty: *May v. May*, 33 Beav. 81. See note (g) to s. 3, *post*.

(h) "Owner of real property of the actual value:" see note (n) p. 23. It has not yet been determined in Canada what incumbrances held by other persons than the owner, are to be taken into account as diminishing the value

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of the property to such owner. A mortgagee in actual possession may be registered as a voter: 1 *Stephens on Elections*, 457. *Sed quære*, whether the amount secured by his mortgage, or the value of the land, is to qualify him. The expression in s. 2, defining "owner," is "freehold estate, legal or equitable." If he claims as "occupant," the value of the land would be the qualification. A widow's dower is a diminution of value: *Rogers on Elections*, 47. An estate in dower is a freehold estate: *Co. Litt.* 621. But where the widow had not received or claimed dower for a considerable length of time: *Held*, a presumptive release of it: *Bedfordshire*, 2 *Lud.* 450. Until dower is assigned it should not be deducted from the assessed value: *Brockville (Gilroy's Case)*, *Ho. E. C.* 129. The husband of a doweress may be registered as a voter, provided he is in receipt of the rents and profits thereof. (See note on p. 29, *ante*). The value of the several parcels of land owned by such owner, within the limits of the electoral district—not those within the municipal limits of the city or town—may be added together to give the qualification (see s. 7, *post*). But the qualification of such owner cannot be made up of other properties held by him under the title of tenant or occupant. Questions of value of land are for the Revising Barrister, and not for the Court to decide: *Cogan v. Luckett*, 2 *C. B.* 182. Where the question of value is doubtful, on conflicting evidence, the leaning is in favour of the franchise: *Ripon, Cock. & R.* 302. But in construing Acts regulating the Franchise the rule is, whenever a doubt arises as to a voter's right, not to decide in favour of the vote, but in accordance with the intention of the Legislature in the language used: *Kearney's Case*, *Alc. Reg. Cas.* 22. See notes to s. 43, *post*.

(i) The distinction in the values of the franchise qualification in cities, towns, townships, villages, and parishes was introduced by 16 *Vic. c.* 153 (*C. S. C. c.* 6). It is not clear why such a distinction was originally made, or why it has been continued in some of the Provincial Acts, in view of the uniform provisions in the Assessment Acts of the various Provinces, as given in note (r) p. 36, and which are equally binding upon all classes of Assessors. Real property in cities is to be assessed, and, for the purpose of the right to vote under this Act, is to be valued, at the same rates of value as real property in towns, townships, villages, and parishes. The effect of this distinction in values will be practically illustrated by observing its effect on the two sides of the roads, streets, or other lines dividing the above defined municipalities from each other.

(j) A person may be registered on the list of voters under this clause:

(1) If a tenant of real property under a lease.

(2) If the rent payable by him is at least \$2 monthly, \$6 quarterly, \$12 half yearly, or \$20 yearly.

any such city or town or part of a city or town, (k) under

- (3) If he has been in possession of such property as tenant for at least one year next before the 1st January, in 1886, or in any subsequent year.
- (4) If he has really and *bona fide* paid one year's rent of not less than the rate aforesaid.
- (5) If such payment of rent be for the year's rent up to the last day of payment next before the date of the certificate of the final revision of the list of voters. But where the annual rental is more than \$20, the payment of \$20 of the last year's rent before such date is to be sufficient.
- (6) If, where there has been a change of tenancies *during the year*, the several tenancies are without any intermission of time, and are sufficient to entitle the tenant to vote had he been in possession under either of them for the *year next before the date* of the said certificate.
- (7) Being otherwise qualified as to age, and allegiance, and not incapacitated by law from voting.

If such tenant is assessed in cities at \$300, or in towns at \$200, he is *prima facie* entitled to be registered as a voter.

(k) See notes (u) to (w) pp. 34-37, and cases there cited, as to the definition of "Tenant." Where A, tenant of a house and field, rented the field to B, who had the exclusive possession thereof; and the house, without the field, was not of the statutory value to qualify for a vote: *Held*, that A could not be registered as a voter: *Re McMahon, Cr. & Dix (Ir.)* 418. A and several others claimed to be registered as voters in respect to property producing a net yearly rental to each of 40s. 6d., the statutory qualification being 40s. They allowed a commission on this rental to one of their number, who managed the property for them, which reduced the value below the statutory limit. The Revising Barrister found that "the allowance of such commission from the value of the property, was necessary for the collection of the rents." *Held*, that the claimants were not entitled to vote: *Sherlock v. Steward*, 7 C. B. N. S. 21; s. c. 6 Jur. N. S. 611. A occupied solely, as tenant, a house and land at a yearly rental of £40. He also, jointly with his father, occupied other lands at a yearly rent of £64. Both occupations were under the same landlord: *Held*, that A's proportion of the joint rent could not be added to his separate rent of £40, so as to give him the franchise qualification of £50 rental required by the statute: *Smith v. Foreman*, 18 C. B. N. S. 144; s. c. 11 L. T. N. S. 693. But under the Act of 1867 (Imp.) several parcels of land held by a tenant under different landlords may be added together for the purposes of a franchise qualification: *Huckle v. Piper*, L. R. 7 C. P. 193. Similarly under this Franchise Act all such tenancies in the electoral district may be added together. Where, after a claim to vote was refused for want of rental value, a new lease was made and a note given for a higher rent, but contemporaneously an agreement was made that the new rent and note were to be paid only in the event of the vote being registered: *Held*, that, by reason of fraud, the claim to vote was inadmissible: *Re*

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a lease, (l) at a monthly rental of at least two dollars, or Monthly. at a quarterly rental of at least six dollars, or at a Quarterly. half-yearly rental of at least twelve dollars, or at an Half-yearly. annual rental of at least twenty dollars, (m) and has been Annual

Giblin, 1 Cr. & Dix (Ir.) 526. The Revising Officer, under this Act, determines the values of all qualifications except rents or incomes which are fixed by contract. See as to "lodgers," note (u), p. 82, *post*.

(l) "Tenant under a lease." A lease is a contract between parties by which the one conveys any lands and tenements to the other for life, for years, or at will; but always for a less term than the party conveying himself has in the premises; for if it be for the whole interest it is more properly an assignment: *Woodfall's L. & T.* 56. It may be in all cases by deed, and in some cases by writing without deed, and also by verbal contract of demise where followed by entry of the lessee: *Ibid.* 58. Leases by parol were good at common law. But the Statute of Frauds required certain leases to be in writing; and the result of the cases under it seems to be, that verbal leases exceeding three years are not valid, so far as regards the duration of the term: *Ibid.* 59. By R. S. O. c. 98, s. 4, a lease of any land required by law to be in writing, is void at law unless made by deed. An agreement not under seal, whereby A agreed to let to B certain premises for one, three, or five years, was held void as a lease for five years, but good for three years: *Osborne v. Barnshaw*, 12 U. C. C. P. 267. A writing intended as a lease, but void for the creation of a term (not having been executed according to law), may be looked at to ascertain the conditions of occupation: *Galbraith v. Fortune*, 10 U. C. C. P. 109. *Quære*, whether such a writing could in any case be construed as more than an agreement for a lease: *Hurley v. McDonnell*, 11 U. C. Q. B. 203. Letters may constitute an agreement for a lease and not a demise: *Jones v. Reynolds*, 1 Q. B. 506. Where a tenant enters under a verbal lease void under the statute, a tenancy from year to year may be implied, though no rent has been paid: *Gibboney v. Gibboney*, 36 U. O. Q. B. 236. "A sub-lessee is unquestionably a lessee:" *Per Brett, J. in Chorton v. Stretford*, L. R. 7 C. P. 201. But such sub-lessee must be in the actual occupation of the premises in order to be entitled to vote: *Ibid.* See further, *McGinnes v. Kennedy*, 29 U. C. Q. B. 93.

(m) In some cases it will become a question whether taxes are, or are not, to be deducted from the "rental." By R. S. O. c. 180, s. 21, it is provided that any occupant may deduct from his rent any taxes paid by him, unless there is a special agreement between the occupant and owner to the contrary: so that, in Ontario, if the lease contains no provision as to the payment of taxes, it is the duty of the landlord to pay them: *Dove v. Dove*, 18 U. C. C. P. 424. But if, though the lease be silent as to taxes, the tenant verbally agrees to pay them, he cannot, after having voluntarily paid them in pursuance of his agreement, even if it were without consideration, recover back, or set off, such payment: *McAnnany v. Tickell*, 23 U. C. Q. B.

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in possession thereof as such tenant for at least one year next before the first day of January, in the year of our Lord one thousand eight hundred and eighty-six, or in any subsequent year, (n) and has really and *bona fide* paid one year's rent for such real property at not less than the rate aforesaid : Provided, that the year's rent so required to be paid to entitle such tenant to vote shall be the

499. Taxes, when paid by the tenant, do not constitute part of the rent payable by him for the land : *Bedfordshire*, 2 Lud. 475. "The word 'rent' may be read to mean what the landlord gets as rent under the usual conditions, though technically this is not its meaning ; and if the landlord is not obliged to pay the rates, all that he gets as rent, and all that ought to be taxed as rent, is the whole payment after deducting what he is obliged to pay : " *Per* Cleasby, B. in *Sheffield v. Bennett*, L. R. 7 Ex. 421. The annual value, or real rent, of the premises is the sum which the tenant pays for the right to occupy the premises in a normal state, with nothing but what may be called their freehold advantages : *Per* Bramwell, B., *Ibid.* 416. A tenant occupied a house at a yearly rental, the landlord to pay rates and taxes : *Held*, that the rates and taxes should be deducted in ascertaining the value of the rent : *Re Whittaker*, 3 Cr. & Dix (Ir.) 428. Where part of the terms of the letting were that the landlord should pay the tenant's taxes, and that, if the landlord had not so agreed, the rent would have been less than the statutory qualification : *Held*, that the tenant was not entitled to be registered as a voter : *Moorhouse v. Gilbertson*, 14 C. B. 70 ; s. c. 17 Jur. 1184. In Quebec the rent of houses, interest of sums due, and arrears of rent, are called "civil fruits : " *Civil Code L. C. s. 449*. The usufructuary, who has the right to such fruits (s. 447), is liable for all taxes : *Ibid.* s. 471. The rental qualification is the same in cities, towns, townships, and parishes, and differing from the other values of property qualification for voters, is thus uniform throughout the Dominion. See s. 4, subs. 4. The effect of describing the payment of rent as monthly, quarterly, half-yearly, or yearly, is to recognize such tenancies for the qualification of voters. See note (u) p. 82, *post*, as to the right of "lodgers" to be registered as "tenants."

(n) There may be found some ambiguity in the subsequent part of this clause, relating to a "change of tenancies." This part of the clause requires the tenant to be in possession for "one year next before the 1st January, in the year 1886, or in any subsequent year ;" but further on it is provided that "a change of tenancy during the year" is not to deprive the tenant of the right to vote, if such change is without any intermission of time, and if the several tenancies are such as would entitle the tenant to vote had he been in possession under either of them "for the year next before the date of the certificate" of the final revision of the list of voters. The date of the final revision must be some time after not less than five weeks (s. 26) subsequent to the publication of the unrevised lists,—which publication is to be "on or before the 1st June, 1886" (s. 24).

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year's rent up to the last yearly, half-yearly, quarterly or monthly day of payment, as the case may be, which shall have occurred next before the date of the certificate of the final revision of the list of voters made by the Revising Officer as hereinafter mentioned; (o) except where the rental is an annual one and for a larger sum than twenty dollars, in which case at least twenty dollars of the last year's rent which shall have accrued next before the date of the said certificate must have been paid; (p) and provided also, that a change of tenancy during the year shall not deprive the tenant of the right to vote if such change is without any intermission of time, and the several tenancies (q) are such as would entitle the tenant

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(o) Payment of rent is here made a condition precedent to the right to be registered as a voter; and it must be the payment of that portion of it which fell due "next before the date of the certificate of the final revision." The rent payable does not include arrears of rent due before the commencement of the qualifying year. See a similar case as to pre-payment of rates: *Cull v. Austin*, L. R. 7 C. P. 227.

(p) "Rent," under R. S. O. c. 136, "shall, like interest on money lent, be considered as accruing due from day to day, and shall be apportionable in respect of time accordingly." In Quebec, rent from the lease of farms, rent of houses, and other civil fruits are considered to be acquired day by day, and belong to the usufructuary in proportion to the duration of his usufruct: *Civil Code L. C. s. 457*. The term "accrued" here used would seem to mean "accrued due up to the last day of payment."

(q) The expression in the Reform Act of 1832, s. 28 (Imp.) is: "different premises occupied in immediate succession during the twelve calendar months." In order to constitute good successive occupation it is necessary that both sets of premises should be of sufficient value to entitle the occupier to vote for them severally: *Rogers on Elections*, 86. The words "immediate succession" imply nothing more than that there should not be a break in the occupation: *Elliott on Electors*, 185. A voter occupied premises which were rated above the statutory amount up to June, and then rented other premises rated at less than the statutory amount, but on which he expended sufficient to raise it to the statutory value: *Held*, that the tenant did not occupy, for the year, premises in immediate succession of the statutory value, and that the vote was bad: *Wigan (Part's Case)*, Bar. & Aus. 167. A voter, being in difficulties, made an agreement with his daughter, with the consent of the landlord, whereby she was substituted as tenant of the property, her name placed over the door, and the business carried on by her. The voter then removed to a distance, but returned to the borough a few days

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to vote had such tenant been in possession under either of them, as such tenant, for the year next before the date of the said certificate; (r) and provided further, that where on any revised or final assessment roll the amount of the tenant's rent is not stated, the fact that the real property in respect of which he is entered on such roll as the tenant thereof is assessed in cities at three hundred dollars or more, or in towns at two hundred dollars or more, shall be *prima facie* evidence of his right to be registered as a voter; (s) or—

before the election: *Held*, vote bad: *Ibid.* (*Corless's Case*), 129. Where a claimant occupied three houses in succession, but the overseer, in making out the lists for revision, by mistake omitted to specify the third house: *Held*, that the Revising Barrister had power, on the revision of the lists, to correct the mistake: *Ford v. Hoar*, 14 Q. B. D. 507. See also, *Lynch v. Wheatley*, *Ibid.* 504.

(r) In construing this clause, the distinction between the requirement as to possession, and the requirement as to payment, should be noted. The possession of the tenant must be for the year next before the first of January; while the payment of his rent must be for the year up to the gale day next before the date of the final revision. The expression "change of tenancy during the year" refers to the "possession, and would therefore import into the words "during the year:" the year next before the first of January. If so, there may be a difficulty in construing the words "possession under either of such changes of tenancy, for the year next before the date of the certificate of final revision," so as to make it harmonize with the foregoing requirement as to possession. See preceding note (n) p. 70.

(s) The name of a claimant appearing on the list of voters returned to the Clerk of the Peace, and on the list for poor rates, establishes a *prima facie* case to be registered as a voter: *Byrne's Case*, 6 Ir. C. L. 412. The name of the voter being on the poll book is *prima facie* evidence of his right to vote. The party attacking the vote may either call the voter, or offer any other evidence on the subject: *Stormont*, Ho. E. C. 21. *Prima facie* evidence to sustain a claim to occupation throws the onus on the objector to meet the same by proof of disqualification: *Moore's Case*, 7 Ir. Jur. 59. The assessment roll is conclusive evidence as to the value of the property, but not as to the right of the person to vote: *North Victoria*, Ho. E. C. 584. Formerly the assessment roll was conclusive as to value, and the right to vote: *West Elgin*, 9 U. C. L. J. 330. The Court will not go behind the voter's list to inquire whether a voter's name was entered upon the assessment roll in a formal manner, or not: *North Simcoe*, Ho. E. C. 612. See note (v), p. 50, ante.

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(5) Is the *bona fide* occupant of real property (t) within Occupancy. any such city or part of a city, of the actual value of three hundred dollars, or within any such town or part of Cities, \$300. a town of the actual value of two hundred dollars, Towns, \$200. whether such occupation is under a license of occupation Kind of occupation. or agreement to purchase from the Crown, or from any other person or corporation, or exists in any other manner except as owner or tenant: (u) Provided in any One year's possession. case, that such person has been in possession of such real property as such occupant for one year before the first day of January, in the year of our Lord one thousand eight hundred and eighty-six or in any subsequent year, (v)

(t) See notes (x) to (a) on the clause defining "Occupant," pp. 37-40 *ante*. A man shall be said to be *bona fide* possessed where the person possessing is said to be ignorant of all the facts and circumstances relating to his adversary's title: *Dormer v. Fortescue*, 2 Atk. 124. A possessor is in good faith when he possesses in virtue of a title, the defects of which, as well as the happening of the resolutive cause which puts an end to it, are unknown to him; such good faith ceases only from the moment that these defects, or the resolutive cause, are made known to him by proceedings at law: *Civil Code L. C. s. 412*. See *Stuart v. Baldwin*, 41 U. C. Q. B. 446. A person may be registered on the list of voters under this clause,—

- (1) If a *bona fide* occupant of real property of the value stated above.
- (2) If such occupation is
 - (a) Under a license of occupation, or
 - (b) Agreement to purchase,—from the Crown, or from some other person or corporation, or
 - (c) Exists in any other manner except as owner or tenant.
- (3) If such person has been in occupation as such occupant for one year as above defined; and in the enjoyment of the revenues and profits thereof,—
 - (a) for his own use, or
 - (b) for the use of his wife.
- (4) Being otherwise qualified as to age, and allegiance, and not disqualified by law from voting.

(u) An occupation which "exists in any other manner" than as above specified, would include a squatter's right. See note (x) p. 37.

(v) There is no provision in this clause for "successive occupations," as in the case of a tenancy. See note (q) *ante* p. 71. The qualifying property must have been the same throughout the year. Neither a *right* of possession, nor a *right* to occupy, necessarily implies the exercise of the right in fact. Under the definition of occupant (*ante* p. 37), this Act requires "actual

and is and has been for such time in the enjoyment of the revenues and profits thereof, for the use of such occupant, (w) or in the case of a married man, for his own

occupation." A person who occupied a lot of land, cut hay on twenty acres of an adjoining lot, and stored it in a barn thereon: *Held*, not such an occupancy of the twenty acres as exempted such twenty acres from being assessed as non-resident land: *Bank of Toronto v. Fanning*, 17 Gr. 514. "The occupancy contemplated by the statute [now R. S. O. c. 180] is a visible occupancy:" *Per Spragge, C., Ibid.* The fact of occupation is an essential ingredient in the franchise, and must be substantially proved: *Rogers on Elections*, 69. "There is a material distinction between a holding, and an occupation. A person may hold, though he does not occupy:" *Per Littledale, J., Rex v. Ditcher*, 2 B. & C. 183. There must be no break of occupation. If the premises are quitted, though but for a single day, the qualification is destroyed for the year: *Cox & Grady on Elections*, xxx. The claimant, a non-commissioned officer, had been absent on duty for twenty-one days during the qualifying period, and could not return without leave, but during his absence his furniture remained in his rooms, which were not used or occupied by anyone else: *Held*, that he was not qualified: *Ford v. Barnee*, 55 L. J. Q. B. 24, s. c. *Atkinson v. Collard*, 16 Q. B. D. 254. See also p. 33, ante.

(w) "the cases governing the fact of "actual residence" would seem to be applicable to some extent to the cases of "actual occupation," subject to the following limitations: A "residence" may be maintained for the statutory period by an occupation of any number of different premises within the same Parliamentary or electoral division, by the voter himself. An "occupation" must be an actual and continuous occupation of the same premises within such division for the statutory period by the voter or his family. A permanent unbroken dwelling in a particular place is not required to constitute residence; absence if there be a power of returning, and an intention to return, will not prevent a constructive legal residence. But if a person has relinquished the dominion over his house for any period, however short, or has abandoned the intention to return to it, even though he does subsequently return to it, it cannot be said that he has a constructive occupation. See *Rex v. Sergeant*, 5 T. R. 466; *Rex v. Duke of Richmond*, 6 T. R. 560; *Regina v. Brighthelmstone*, 1 Q. B. 674. A person in gaol for a portion of the qualifying period is not *sui juris*, and cannot be registered: *Powell v. Guest*, 11 L. T. N. S. 599. If a person is imprisoned he is not complying with the requisites of the statute. I will assume he had a house, and that he had a wife and family, and the *animus revertendi* as soon as his imprisonment might be over; but during the time he was in prison he had not the liberty to return, by reason of a wrongful act on his part leading to such a confinement as prevented his being bodily present: *Per Erle, C. J., Ibid.* An officer in the army is subject to the pleasure of the Crown, and therefore not *sui juris*: *Ford v. Hart*, L. R. 9 Q. P. 272. The voter at the time of registration occupied a house, from which he removed to another part of the borough, leaving, however some fur-

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niture and other goods in it, sleeping there occasionally and continuing to be rated and to pay rent for it, his son and daughter, who had previously lived with him continued to reside there, the son using the house as his residence for his professional business : *Held*, the voter did not occupy the house as required by the statute : *Wigan (Nathan's Case)*, Bar. & Aus. 152. Where a rector, who claimed to vote in respect of his rectory house, went to the continent for eight months, after arranging with a curate to serve the cure during his absence, and to whom he assigned the rectory house as a residence, but retained three rooms which he locked up : *Held*, that he was not a "resident" for six months, nor an "inhabitant" [or occupant] for a year, and therefore not entitled to vote : *Durant v. Carter*, L. R. 9 C. P. 261. Where the claimant gave up the use of his house to another for three months, retaining, however, two rooms : *Held*, that, as he had voluntarily given up the possession of his house for good consideration for such period, he could not be said to have occupied it during such period, and therefore was not qualified : *Ford v. Pye*, *Ibid*, 269. Where a voter had been sold out and obliged to leave his house, from which he removed to an inn in the borough : *Held*, disqualified : *Bewdley (Evans's Case)*, 1 O.M. & H. 174. Where the voter's wife and children lived at his house at M; he himself following the occupation of an omnibus conductor in London, and only having slept at M at intervals during three years : *Held*, vote good : *Great Marlow (Clarke's Case)*, Bar. & Aus. 83. And so held where the voter removed temporarily to London, for the purpose of passing through the Insolvent Court, his wife remaining behind : *Cambridge (Lyon's Case)*, Wol. & Br. 46. The claimant who resided and carried on business elsewhere, in order to obtain a vote in T paid a friend 9d. a week for a bed-room and a closet, of which he kept the key. During the six months he slept there twelve times. The arrangement was made to qualify the claimant : *Held*, not a *bona fide* residence : *Whithorn v. Thomas*, 7 M. & Gr. 1. "Residence" must mean an actual occupation, by the party being there some time by himself or his family. There must be an *animus residendi* : *Per Tindal, C.J., Ibid*. See pp. 33 and 76.

(x) See note (p) pp. 24-29, *ante*, and note (a) p. 40, *ante*. Where the marriage had taken place before the Married Woman's Property Acts, and the husband's right became a vested interest in his wife's real estate, his occupancy of such real estate would give him the enjoyment of the revenues and profits thereof for his own use in right of his wife. "Upon such marriage the husband became entitled, by the law of England, to the rents and profits of the wife's estate during the joint lives of the two." *Per North, J. in Fowke v. Draycott*, 29 Ch. D. 999 (see p. 27, *ante*). If the husband be an alien, he will take no interest in his wife's real estate : *Bright's H. & W.* 9. Nor will he, while an alien, be entitled to a tenancy by the curtesy therein : *Ibid*. 125. Nor will he acquire any right in his wife's leaseholds : *Theobald v. Duffoy*, 9 Mod. 104. Marriage, and the acquirement of property by a married woman, subsequent to the Acts, give the husband no estate or

Income \$300.

(6) Is a resident within such city or town, (y) or part of

interest in his wife's property, nor any right to enjoy the revenues and profits thereof; for the husband may be restrained by injunction from interfering with his wife's property (see p. 40, *ante*). "The right of possession of the property to which a wife is entitled to her separate use is an exclusive right against her husband; and, whatever his rights are, he cannot authorize anybody to intrude on the possession of his wife's separate property." *Per* Lindley, L. J. in *Weldon v. DeBathe*, 14 Q. B. D. 339. *Quære*, if the husband has himself the right to enter such property: *Ibid.* A husband is entitled to maintain an action against his wife, and to charge her separate property for money lent to her, or money paid for her, at her request, after the marriage; but not for moneys lent or paid at her request before marriage: *Butler v. Butler*, 14 Q. B. D. 831.

(y) Residence is where one habitually sleeps. *Prima facie* a man's home is where his wife lives: *Reg. v. Norwood*, L. R. 2 Q. B. 457. It is where a man establishes his abode and makes the seat of his property: *Chase v. Miller*, 41 Penn. St. 403 with a fixed purpose of remaining, and which cannot be referred to an occasional purpose either of pleasure or business: *Bampde v. Johnston*, 3 Ves. 201. "An inhabitant of any place is one who makes it his place of abode, his dwelling place; he must *reside* there, and, to qualify him as a voter, the residence must have been continuous for the twelve months preceding. Any breach of residence, even for a single day, will disqualify. What is a breach of residence? The *animus revertendi* then presents itself for consideration, as also do questions of absence in prison, of persons abroad on military service, and other conditions which will frequently present themselves as affecting claims and objections." *Cox & Grady on Elections*, xvi. Occasional residence in a borough is not sufficient. The voter, his wife and family resided at D. He kept a shop and bed-room at B, where he slept occasionally; *Held*, not a voter in B: *Bewdley (Edmonds's Case)*, 1 O'M. & H. 175. Where a voter had a house in the borough where his wife and daughter always lived, but, being a plate-layer on a railway, he only occasionally came and slept at home, his residence was held sufficient, because his wife resided in the borough: *Northallerton (Bilton's Case)*, *Ibid.* 171. A voter had two residences, one at some distance from N, where he generally resided; and another at N, which he always kept up, but where he stayed only sixteen times during the year. He kept two servants there, and often allowed persons to stay there as guests: *Held*, qualified in N: *Ibid.* (*Marshall's Case*). Where a clergyman exchanged with another and removed for two months to another place: *Held*, that there was a break in the residence which prevented the claimant being qualified to vote: *Ford v. Fye*, L. R. 9 C. P. 269. A voter who kept a public house in the town, where he slept a bed and slept there occasionally, but he had a house in the country where he usually slept: *Held*, that, as a man's residence was where he habitually slept, the voter was not qualified to vote in the town: *Oldham (Baxter's Case)*, 1 O'M. & H. 158. On the 28th October a resident of R obtained an appoint-

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ment in D, and from that date to the 12th November he passed almost every day at D transacting his business, returning every night but three to his family at R. On his appointment he engaged a house at D, but did not occupy it until the 12th November, on which day he removed his family to it, and became domiciled in D: *Held*, that he was a resident of R until the day of his removal with his family to D: *Williams v. Whiting*, 11 Mass. 442. Plaintiff had a house and property at S, where he had a store and carried on business, and where his family resided. He held a government appointment at F, where he spent the greater portion of his time in the discharge of his official duties, and where he lodged at an hotel. A local statute authorized the assessors to assess the real and personal property of the inhabitants of F, and of all persons liable to be assessed, and of the income of the inhabitants, derived from any trade, profession, or calling within the Province: *Held*, that plaintiff was not an "inhabitant" of F, and that his carrying on his departmental duties there did not subject him to be assessed in F: *Hathaway v. Cumming*, 6 Allen N. B. 161. Nor is a clerk in a public department in F, but who resided elsewhere, liable to be assessed in F: *Ex parte Smith*, 2 Pugs. N. B. 147. "An inhabitant, in its ordinary phraseology, means a dweller, or one who dwells, or resides, permanently in a place, or who has a fixed residence, as distinguished from an occasional lodger, or visitor, unless a statutory signification is given to the term, where used in a particular connection, different from its grammatical import, or its usual meaning in common parlance:" *Per Ritchie, C. J., Ibid.* See further, notes (s) p. 33, (v) and (w) pp. 73-75.

(z) The words "city or town or part of a city or town," must be interpreted by the commencement of this section (p. 54), to mean an electoral district. Persons qualified to vote under this clause are to be registered as voters, and to vote in the polling district where they reside at the time of registration (s. 7, *post*).

(a) "Income from earnings." This is to be construed with the term income from some trade calling, office, or profession. The earnings may consist of wages, or salary, from some calling, or fees from some office or profession. The word "income" is *equidem generis* with salary: *Ex parte Benwell*, 14 Q. B. D. 307. Income is not that which comes in less an outgoing. In speaking of a man's income from an estate no one would deduct the interest payable on money borrowed. The income of the United Kingdom is not its revenue, less the interest on the national debt: *Per Bramwell, B. in Reg. v. Commissioners of Southampton*, L. R. 4 H. L. 472. Income means the total amount recoverable without regard to any outgoing: *Per Lord Chelmsford, Ibid.*, 483. "Income," is the gross revenue of an individual whether it arises from rents of real estate, interest on money loaned, dividends on stocks, or compensation for personal services rendered in any trade, profession or occupation: *Burroughs on Taxation*, 159. Income when

from some investment in Canada (b) of not less than three hundred dollars annually, and has so derived such income, and has been such resident for one year (c) next before the said first day of January, in the year of our Lord one thousand eight hundred and eighty-six, or in any subsequent year; or—

Residence.
As son of owner.

(7) Is the son (d) of any owner of real property, (e)

applied to the income of a commercial business, in its natural and commonly accepted sense, should be construed as the balance of gain over loss: *Lawless v. Sullivan*, 6 App. Cas. 373, overruling s. c. 3 S. C. R. 117. As applied to a company the term "income" does not mean gross earnings, but only the net earnings after current expenses are provided for: *McCarger v. McKinnon*, 15 Gr. 361. The profits of a merchant in his business, including the value of his management, is not income: *Sterling v. Mayor of Fredericton*, 2 Pugs. N. B. 155. "Income" is derived from the trade, profession or calling, by the combined mechanical and intellectual labour of the person pursuing the trade, profession, or calling, even though such mechanical or intellectual labour is applied in combination with, or directly to, real or personal property, and so the real and personal property may contribute to the production of the income, as would be the case in most trades, such as cabinet-makers, coach-builders, &c.: *Per Ritchie, C. J., Ibid.* The qualifying income may be derived from an employment or investment held in other electoral districts than the one in which the income voter resides. See further note (d) to s. 7.

(b) "Income from some investment in Canada" will cover the right of a large class of voters, many of whom will also be included in the other classes of voters. The investment, to qualify under this clause, may be such an investment of capital as will produce an income in the shape of interest on loans, deposits, mortgages, debentures, or other securities, dividends on stocks or shares, or rents of houses, &c.

(c) See notes as to residence, pp. 74-77.

(d) The term "son" includes sons, grand-sons, step-sons, and sons-in-law (see p. 45).

(e) The essential requisites of this franchise qualification are: (1) Ownership of real property by a person standing in the relationship of father, grandfather, step-father, or father-in-law to the proposed voter. (2) Sufficient multiple values of such property, beyond the minimum of qualification required to give a qualification to the owner. (3) The owner's residence thereon, and his qualification to vote in respect of such property. (4) Relationship to such owner as son, grand-son, step-son, or son-in-law. (5) The

and not otherwise qualified to vote, (*f*) and

(*a*) If his father is living, is and has been resident upon such property continuously with his father, (*g*) being such owner, in such city or town or part of a city or town for one year next before the first day of January, in the year of our Lord one thousand eight hundred and eighty-six, or in any subsequent year, if the real property on which

If father is living.

Resident with father.

"continuous residence" of such son, &c., with such father, &c., on such property, for one year next before the 1st January, in 1886, or in any subsequent year. (6) Residence with such father, &c. (or mother, step-mother, or mother-in-law), on such property at the time of the election. Two periods of absence are not to disqualify: (*a*) "Occasional absence" for not more than six months in the year (next before such 1st January); (*b*) Absence from home during the time spent by such sons as mariners, or fishermen, or as students at institutions of learning within Canada (see notes to s. 8, *post*). The clauses conferring the electoral franchise on the sons, grand-sons, step-sons, and sons-in-law of owners of farms, and of other real property, may be said to give a legislative sanction to a new principle of modern political legislation, viz.: that the possession of property is not the necessary evidence of a voter's political intelligence, or of his qualification to vote at a Parliamentary election. No estate or interest in real or personal property is required of this class of voters,—only a relationship to an owner of real property, and a continuous residence on such real property for a year. It may also be said that another principle—that of cumulative voting—has here received a degree of legislative recognition, whereby additional votes for every multiple of the minimum value of the franchise qualification, may be given, up to the full value of an owner's real property, at a Parliamentary election; not by means of the electoral ballot of the owner, but vicariously through the ballots of the male members of his household,—his sons, grand-sons, step-sons, and sons-in-law.

(*f*) "Not otherwise qualified to vote." These words would seem to give the Revising Officer the right to reject the registration of a person claiming under this class of voters, if it appeared in evidence before him that such person was "otherwise qualified to vote." But if such person suppressed his other qualification, and obtained registration as an owner's son under this clause, his right to vote as such owner's son could not thereafter be challenged before any Election Court (ss. 31, 39), unless in the meantime his father died, and a new right accrued. See note (*l*), p. 80.

(*g*) See the prior notes as to residence on pp. 74-77. The father must have held such real property as "owner" during such year of residence. See notes on Owner, pp. 18-36, and note (*g*) p. 64.

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If value not sufficient to qualify all sons.

Father and elder sons may vote.

If father is dead.

Resident on property.

his father resides and in respect of which such father is qualified (h) to vote under this Act as owner is of sufficient value, if equally divided amongst them as co-owners, (i) to qualify them as voters under this Act, in which case both the father and such one or more sons as may desire may be so registered as voters; and if the said real property is not of sufficient value to give the father and each of several sons the right to vote in respect of such value when equally divided, then the right to be registered as a voter and to vote in respect of such real property shall belong only to the father or to the father and the eldest or such of the elder sons, being so resident as aforesaid, (j) as the value of the real property when equally divided will qualify; or—

(b) If his father is dead, is and has been resident upon such property continuously with his father, or his mother (k) after the death of his father (being such owner (l)) in such city or town or part of a city or town,

(h) These and the subsequent words of this clause respecting the number of voters to be registered, indicate that the father's name should be entered on the voters' list; subject, however to the disqualifications in s. 11, *post*, and the cases referred to in note (d) pp. 57-59.

(i) The franchise value under this clause is \$300 per voter in cities, and \$200 per voter in towns.

(j) If the grand-father is the owner, and there should be two or three generations resident with him on the real property, the right to vote is to be regulated according to the seniority of the sons, grand-sons, step-sons, and sons-in-law, *inter se*, and not the degree of relationship.

(k) Mother includes mother, step-mother, and mother-in-law, but not grandmother: see p. 45.

(l) "Being such owner," evidently refers to the mother as owner after the death of the father. If otherwise, then where, after the father's death, by operation of law, or under a will, a title to the real property became vested in the sons, or some of them, those who acquired such title would be "otherwise qualified to vote," and could not be registered as "owners' sons." Nor could the other sons be registered; for the father's title, under which alone they would have had any right of qualification, having become vested in another,

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for one year next before the first day of January, in the year of our Lord one thousand eight hundred and eighty-six, or in any subsequent year, if the real property on which his father (or his mother after the death of his father) resided or resides, and in respect of which such father would be qualified to vote under this Act as owner if living. (*m*) is of sufficient value if equally divided among all of his sons as co-owners, to qualify them as voters under this Act, in which case such one or more sons as may desire may be so registered as voters; and if the said real property is not of sufficient value to give each of several sons the right to vote in respect of such value when equally divided, then the right to be registered as a voter and to vote in respect of such real property shall belong only to the eldest or such of the elder sons, (*n*) being so resident as aforesaid, as the value of the real property when equally divided will qualify:—

If value not sufficient to qualify all sons.

Elder sons may vote if resident.

Provided, that in either case, in order to entitle him to vote, each such son must at the time of the election for the electoral district in which he tenders his vote, be so resident (*o*) with his father (or mother after the death of

Proviso; Son must be resident time of election.

would be no longer available to support their right as owners' sons. But where the father's will devised such real property to his wife for life, or during her widowhood, her estate would be a freehold, and she would then come within the definition of "owner" as given on pp. 22-33, and note (*g*) p. 64. The most ancient of estates was an estate for life. All estates which may by possibility last for life, although they may be determinable before the life expires, are freeholds; as an estate to a widow during widowhood: *Co. Litt.* 623. If the sons, after such father's death, should become reversioners of the freehold, then, if the estate was let for life, none of them could vote; but otherwise if they have the freehold in them, to the qualifying amount, and if the letting was for a term of years: *Chambers on Elections*, 599.

(*m*) The title to such real property must have vested in the father or in the mother (after the death of the father), for the qualifying year of residence required of owners' sons.

(*n*) See note (*i*) *ante* p. 80, and note (*f*), p. 87, *post*.

(*o*) The vote may be lost by non-residence between the time of the final revision of the voters' list and the election, subject however to the provision respecting absence provided for in s. 8; and see note (*e*) *ante* p. 78.

Occasional
absence.

his father); but occasional absence of a son from the residence of the father or mother, for not more in all than six months in the year, shall not disqualify such son as a voter under this Act.

IN COUNTIES.

Voters in
counties, if
qualified as
to—

4. Every person shall, upon and after the first day of January, in the year of our Lord one thousand eight hundred and eighty-six, be entitled to be registered on the list of voters for any electoral district or portion thereof in Canada, other than a city or town or portion of a city or town, (*p*) and when so registered to vote at any election for such electoral district, if such person—

Age.

And not
disqualified.

Alienage.

Ownership.

\$150.

Tenancy.

(1.) Is of the age of twenty-one years, and is not by this Act or by any law of the Dominion of Canada disqualified or prevented from voting; (*q*) and

(2.) Is a British subject by birth or naturalization; (*r*) and

(3.) Is the owner of real property (*s*) within any such electoral district of the actual value of one hundred and fifty dollars; (*t*) or—

(4.) Is the tenant of any real property (*u*) within any

(*p*) The clauses under this section are the same as those under s. 3, except as to the value of the franchise qualification, which is reduced to \$150, and except as to the provision respecting farmer's sons.

(*q*) See notes pp. 59-64.

(*r*) See notes to s. 3, subs. 2, pp. 59-64. A person may not be a citizen for political purposes, and yet be a citizen for commercial or business purposes: *Fields v. Adams*, 7 Md. U. S. 209.

(*s*) See notes on pp. 18-34 and 64-67. Not being in possession of a freehold for a year was a valid objection to a voter by the common law of Parliament, before any statutes were passed upon the subject: *Rogers on Elections*, 208. And it was held to be a kind of occasionalty: *Galway*, Per. & Kn. 302.

(*t*) See notes on pp. 23-61.

(*u*) See notes on pages 34-37 and 67-72. As to the right of "lodgers" to be registered under the qualifications of "tenants," there is no very clear

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 porated village, in which case the rental must be payable **rent payable**
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authority in the English cases. In the former borough franchise, "lodgers" were said to represent the ancient franchise of "inhabitants," or "pot-wallers;" *Rogers on Elections*, 53; who had the right to vote on certain conditions: *Ibid*, 118. A "potwaller" was one, whether householder or lodger, who had the sole dominion over a room with a fire-place in it, and who furnished and cooked his own diet ("boiled his pot") at his own fire-place; and who had been a resident in the borough for six months before the election: *Taunton, Fal. & Fitz.* 311. A lodger is a tenant within the meaning of the Reform Act, 1832 (Imp.), if the premises are let to him: *Cook v. Humber*, 11 C. B. N. S. 33. It is difficult to define the difference between a "tenant" and a "lodger;" but probably it may be said with accuracy that where the landlord himself resides in the house the other inmates are lodgers, because they submit themselves to his control; but when the landlord does not reside in the house, or when he occupies a separable set of rooms in the basement, or the house is divided into separate flats,—in each of these cases, even though a servant of the landlord may be present, the separate occupation exists which is necessary to constitute a tenancy: *Per Hannen, J., Anketill v. Baylis*, 10 Q. B. D. 586. Unless the owner has the general control and superintendence of the house, the person who occupies a portion of such house under him is not a lodger: *Scott v. Metcalf* 10 Ir. C. L. 557. There is no doubt a lodger is a tenant where the house is partially let out, and where it is wholly let out, provided that the lodgers in each case have the right to the exclusive possession to their own rooms: *Per Montague Smith, J., in Stamper v. Sunderland*, L. R. 3 C. P. 406. In the Imperial Act of 1867 (30 & 31 Vic. c. 102, s. 51), the term "dwelling-house" was defined to include any part of a house, occupied as a *separate* dwelling, and *separately* rated to the relief of the poor; and it was held that such limiting words excluded lodgers from the franchise, except where (under s. 4, subs. 2) their lodgings were worth, unfurnished, £10 a year: *Bradley v. Baylis*, 8 Q. B. D. 195; or unless the rooms occupied were structurally severed, and had a common staircase: *Henriette v. Booth*, 15 C. B. N. S. 500; as where the house is divided into separate flats. Flats are as much separate dwellings as ordinary adjoining houses. The difference is that flats are divided one from another by a horizontal plane, but ordinary adjoining houses by a vertical plane: *Per Byles, J., in Stamper v. Sunderland*, L. R. 3 C. P. 400. The only difficulty was the fact of their being built with an inside staircase. Supposing they had been built as Swiss houses are built with staircases outside, you would have gone up the outside staircase to the level of your own

One year's
possession.

in money only (v)), and has been in possession thereof as such tenant for at least one year next before the first day

landing, and have opened the door of your own house built as a separate house: *Per Brett, L. J., in Bradley v. Baylis*, 8 Q. B. D. 232. A clerk who occupied a furnished room of sufficient value, in his employer's house, but was not bound to do so, and could discharge his duties equally well if he resided elsewhere, was held entitled to be registered as a lodger, although if he had resided out of the house he would have received an increase of salary as an equivalent for the loss of the bed-room, and would be obliged to give up possession at once if his employment ceased, or if he were dismissed by his employers: *Parker v. Campion*, 5 Ir. C. L. 75. These cases, when considered in connection with the definition of the term "real property" (p. 50, *ante*), as including "any portion" of a house, store, office or building whatsoever, may lead to the inference that this Act was intended to confer the electoral franchise on lodgers under the title of "tenants of any portion of a house." This inference may be supported by comparing the difference in the wording of the English and Canadian Acts as above noted. The absence from the Canadian Act of the limiting words "separate dwelling" and "separately rated," found in the English Act, renders many of the English decisions inapplicable, and indicates that a more liberal construction should be placed upon the tenancy clauses of this Act, by which a "lodger," being within the definition of "tenant," and occupying as such tenant any portion of a house, store, office, or building of any description, at the qualifying rental, and for the qualifying period, under one or several successive tenancies, may be entitled to the elective franchise, provided he is otherwise qualified, as defined in subs. 4, s. 3, and subs. 4, s. 4, and note (j) p. 67, *ante*. See further the cases on p. 35, referring to the tenants of rooms in a house structurally severed.

(v) This is a variation of the clause defining "tenant," (pp. 34-37), and it has the effect of excluding incorporated villages from the operation of the definition there given. The words "in money, in kind, or in money's worth of like value (except when the real property is situated in an incorporated village, in which case the rental must be payable in money only)," are not in subs. 3 of s. 3, p. 69, *ante*. Money's worth would include services rendered, as where occupation of premises is given in part remuneration for services: *Hughes v. Chatham*, 5 M. & Gr. 54, s. c. 7 Jur. 1136. General words in an Act of Parliament may be qualified or restrained by subsequent sentences, or clauses, in the same statute: *Rex v. Archbishop of Armagh*, Mod. 8. Where a general intention is expressed, and the Act also expresses a particular intention incompatible with the general intention, the particular intention is to be considered in the light of an exception: *Churchill v. Crease*, 5 Bing. 180. Where there is a proviso to a section, the presumption is that but for the proviso, the enacting part of the section would have included the subject matter of the proviso: *Mullins v. Surrey*, 5 Q. B. D. 170.

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of January, in the year of our Lord one thousand eight hundred and eighty-six, or in any subsequent year, and has really and *bonâ fide* paid one year's rent for such real property at not less than the rate aforesaid: Provided, that the year's rent so required to be paid to entitle such tenant to vote shall be the year's rent up to the last yearly, half-yearly, quarterly or monthly day of payment, as the case may be, which shall have occurred next before the date of the certificate of the final revision of the list of voters made by the Revising Officer as hereinafter mentioned; except where the rental is an annual one and for a larger sum than twenty dollars, in which case at least twenty dollars of the last year's rent which shall have accrued next before the date of the said certificate must have been paid; and provided also, that a change of tenancy during the year shall not deprive the tenant of the right to vote, if such change is without any intermission of time, and the several tenancies are such as would entitle the tenant to vote had such tenant been in possession under either of them, as such tenant, for the year next before the date of the said certificate: (w) Provided further, that where on any revised or final assessment roll the amount of a tenant's rent is not stated, the fact that the real property in respect of which he is entered on such roll as tenant thereof is assessed at one hundred and fifty dollars, or over that sum, shall be held to be *prima facie* evidence of his right to be registered as a voter; (x) or—

One year's rent.
 proviso:
 computation of rent.

Exception.
 At least \$20 to be paid.

Proviso;
 change of tenancy.

Proviso: if rent not stated on assessment roll.

(5.) Is the *bonâ fide* occupant of real property within such electoral district of the actual value of one hundred and fifty dollars, whether such occupation be under a

Occupancy.

(w) See notes on pp. 70-72.

(x) See notes on pp. 48-50, and 72. By the Quebec Election Act (38 Vic. c. 7), the annual value of a property is sufficient to give the franchise to the proprietor or occupant, even where the actual value does not give such qualification; but the rental value required by law does not, unless the property is of the actual value required: *Gratton v. St. Scholastique*, 7 Rev. Leg. 356.

License of occupation.	license of occupation or agreement to purchase from the Crown or from any other person or corporation, or exists in any other manner except as owner or tenant: (y) Provided in any case, that such person has been in possession of such real property as such occupant, for one year next before the first day of January, in the year of our Lord one thousand eight hundred and eighty-six, or in any subsequent year, and is and has been for the said time in the enjoyment of the revenues and profits thereof for the use of such occupant, or in the case of a married man for his own use or for the use of his wife; (z) or—
One year's possession.	
Married man.	
Income.	(6.) Is a resident within such electoral district, and derives an income from his earnings in money or money's worth, (a) or from some trade, office, calling, or profession, or from some investment in Canada, of not less than three hundred dollars annually, and has so derived such income and has been such resident for one year next before the said first day of January, in the year of our Lord one thousand eight hundred and eighty-six, or in any subsequent year; or—
\$300.	
And residence.	

(y) Under several of the Provincial Franchise Acts the right of voting depends upon the liability of the property to taxation. The franchise in Ontario is annexed to an interest in real property, and taxation in respect thereof: *Per Moss, C. J., in Lincoln*, 2 App. R. 335. A similar rule prevails in Quebec. A curé occupying the presbytery is not an occupant in the sense required by the Quebec Election Act, as the presbytery is not a taxable property; for it is on taxable property only the voting qualification is based: *Kamarouska Electoral Lists*, 3 Q. L. R. 308. See also *Nova Scotia Act*, 48 Vic., c. 2; *New Brunswick Acts*, C. S. N. B. c. 4 and c. 100; and *Manitoba Act*, C. S. M. c. 3. In New Brunswick the right to vote at Provincial elections is conferred on persons who are "assessed" for real or personal property, independently of any question of title.

(z) See notes on the right of a husband to vote in respect of his wife's property pp. 24-29, 40, and 75.

(a) The words "in money or money's worth," are not in the corresponding clause defining income voters in cities, and towns. See notes to that clause pp. 76-78.

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(7.) Is a farmer's son not otherwise qualified to vote; (b) As a farmer's son, and

(a) If his father is living, is and has been resident continuously on the farm (c) of his father, in such electoral district, (d) for one year next before the first day of January, in the year of our Lord one thousand eight hundred and eighty-six, or in any subsequent year, if the said farm is of sufficient value, if equally divided amongst them as co-owners, to qualify them as voters under this Act, (e) in which case the father and such one or more sons as may desire may be registered on the list of voters; If father is living. and if there be more than one son resident as aforesaid on the farm, and claiming to be registered as voters in respect thereof, and the farm is not of sufficient value to give the father and each of such sons the right to vote in respect of such value when equally divided, then the right to be registered as a voter and to vote in respect of the farm shall belong only to the father or to the father and the eldest or such of the elder of the sons, being so resident as aforesaid, as the value of the farm when equally divided will qualify; (f) or-- Residence on If value not sufficient to qualify all sons. Father and elder sons may vote.

(b) The distinction between "farmers' sons" and "owners' sons" is in name only. The general statutory rules governing the qualifications of "owners' sons," in municipalities and places other than cities and towns, including those regulating the amount of the franchise qualification, apply therefore, *mutatis mutandis*, to farmers' sons. See pp. 78-81.

(c) Farm, i. e., "land actually occupied by the owner thereof, and not less in quantity than 20 acres." See notes on pp. 44-45.

(d) Questions may sometimes arise where the father occupies two properties; one a rented farm, held under a lease, on which he resides with his sons and other members of his family, and the other an adjoining farm owned by him according to the definition of owner (pp. 18-34), on which neither father nor sons have their residence. In such a case reference may be had to the judgment of Spragge, C., in *Bank of Toronto v. Fanning*, 17 Gr. 514 (referred to in note (v) p. 74), and the notes (s) p. 33, (w) p. 74, and (y) p. 76.

(e) The value of this franchise qualification is \$150 per voter. See p. 82.

(f) The words "one or more sons as may desire," give the sons, grandsons, step-sons, and sons-in-law, resident on the farm, the option of having

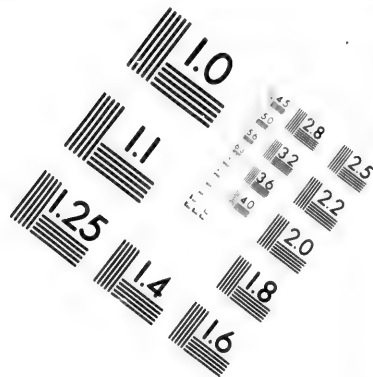
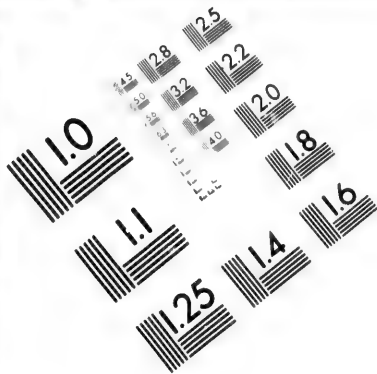
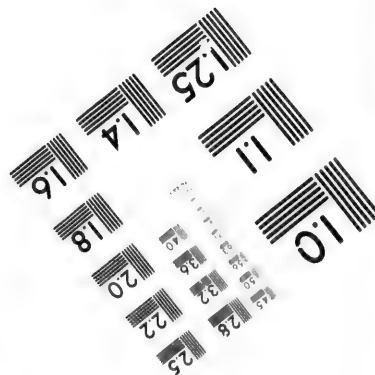
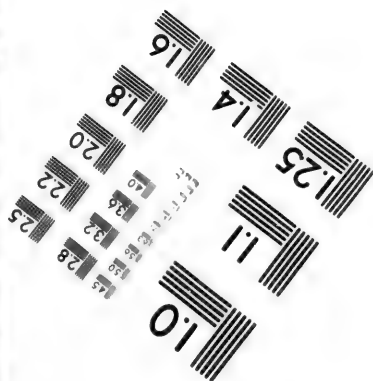
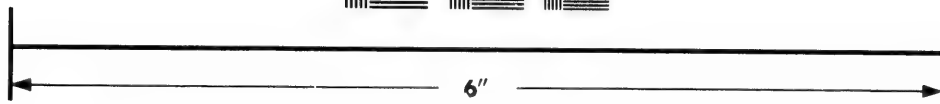
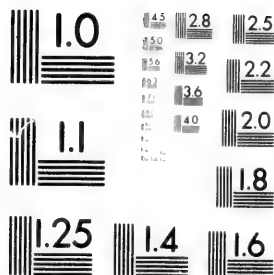


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If father is dead.	(b) If his father is dead, is and has been resident con-
Residence on farm.	tinuously on the farm of his father (or mother (g) after
	the death of his father) in such electoral district, for one
Value.	year next before the first day of January, in the year of
	our Lord eighteen hundred and eighty-six, or in any sub-
	sequent year, if the said farm is of sufficient value, if
	equally divided among all of the sons of such father as
	co-owners, to qualify them as voters under this Act, in
	which case such one or more sons as may desire may be
If value not sufficient to qualify all sons.	registered on the list of voters; and if there be more than
	one son resident as aforesaid on the farm and claiming to
	be registered as voters in respect thereof, and the farm is
	not of sufficient value to give each of such sons the right
	to vote in respect of such value when equally divided,
	then the right to be registered as a voter and to vote in
Elder sons may vote.	respect of the farm shall belong only to the eldest or such
	of the elder of the sons, being so resident as aforesaid, as
	the value of the farm when so equally divided will
	qualify: (h)—
Proviso: son must be resident at time of election.	Provided (i) that in either case, in order to entitle
	him to vote, the son must at the time of the election
	for the electoral district in which he tenders his
Absence.	vote, be so resident with his father (or mother after
	the death of his father); but occasional absence of a
	son from the farm for not more in all than six months

their names registered on the voters' list. Those of them who exercise this option, and "claim to be registered as voters," are to entered on the list according to their seniority by age, not according to their degrees of relationship to the owner. See note (j) p. 80.

(g) See note (l) to clause b of subs. 7, s. 3, p. 80. There is nothing in this Act varying the ordinary rules of law as to the acquisition of titles to real property by possession, bequest, descent, conveyance or purchase.

(h) See notes on pp. 80 and 86.

(i) This proviso is similar to that on p. 81.

in the year (*j*) shall not disqualify such son under this Act as a voter; or—

(8.) Is the son of any owner of real property in such electoral district, other than a farm (and not otherwise qualified to vote) (*k*) and—

As an owner's son.

(a) If his father is living, is and has been resident upon such property continuously with his father, being such owner, for one year next before the first day of January, in the year of our Lord one thousand eight hundred and eighty-six, or in any subsequent year, if the real property on which his father resides and in respect of which such father is qualified to vote under this Act as owner, is of sufficient value, if equally divided among them as co-owners, to qualify them as voters under this Act, in which case both the father and such one or more sons as may desire may be registered as voters; and if the said property be not of sufficient value to give the father and each of such sons the right to vote in respect of such value when equally divided, then the right to be registered as a voter and to vote in respect of such real property shall belong only to the father, or to the father and the eldest or such of the elder of the sons, being so resident as aforesaid, as the value of the real property when equally divided will qualify; or—

If father is living.

Residence with father.

If value not sufficient to qualify all sons.

Father and elder sons may vote.

(b) If his father is dead, is and has been resident upon such property continuously with his father (or his mother (*l*) after the death of his father) being such owner,

If father is dead.

Residence on property.

(j) See notes as to residence (*ante* p. 74 and 76) and "occasional absence," (*ante* p. 79.) The expression "six months in the year," refers to the qualifying year, i. e., "one year next before the first day of January," mentioned in clause 7 (*a*) to this section.

(k) These clauses are substantially the same as those relating to owners' sons in cities and towns, except as to the value of the franchise qualification which is fixed at \$150 in townships, villages and parishes. See notes on pp. 78-81, and 85.

(l) See notes on pp. 80 and 86.

for one year next before the first day of January, in the year of our Lord one thousand eight hundred and eighty-six, or in any subsequent year, if the real property on which his father (or his mother after the death of his father) resided or resides, and in respect of which such father would be qualified to vote under this Act as owner if living, is of sufficient value, if equally divided amongst all of his sons as co-owners, to qualify them as voters under this Act, in which case such one or more sons as may desire may be registered as voters;—and if the said property be not of sufficient value to give each of such sons the right to vote in respect of such value when equally divided, then the right to be registered as a voter and to vote in respect of such real property shall belong only to the eldest or such of the elder of the sons, being so resident as aforesaid, as the value of the real property when equally divided will qualify :

If value
insufficient
to qualify
all sons.

Elder sons
may vote.

Proviso:
Son must be
resident at

time of
election.

Absence.

As a fisher-
man.

Provided (*m*) that, in either case, in order to enable him to vote, each such son must, at the time of the election for the electoral district in which he tenders his vote, be so resident with his father (or mother after the death of his father); but occasional absence of the son from the residence of the father or mother for not more in all than six months in the year, shall not disqualify such son as a voter under this Act; (*n*) or—

(9.) Is a fisherman, (*o*) and is the owner (*p*) of real property and boats, nets, fishing gear and

(*m*) Same as the proviso on pp. 81 and 87.

(*n*) See notes on pp. 79, 80, 81 and 87.

(*o*) This clause has no application to cities and towns. The words “within any such electoral district” refer to the electoral district defined in s. 4, p. 82, which excludes “a city or town, or portion of a city or town;” and not to the term “electoral district” defined on p. 46. See the cases referred to in the latter part of note (*v*) p. 83, and s. 5, *post*.

(*p*) Three qualifications must be combined to confer the right to vote under this clause, besides those prescribed in subs. 1 and 2 of this section: (1)

tackle (q) within any such electoral district, which together are of the actual value of one hundred and fifty dollars. Real property and boats, \$150.

APPLICABLE TO ALL ELECTORAL DISTRICTS.

5. The qualifications required of voters under section three shall apply to voters in a city or town or the part of a city or town attached to a county or riding of a county in any electoral district, for electoral purposes Voters in cities or towns. S. 3. under this Act, (r) and the qualifications required of voters under section four shall apply to voters in such municipalities or places not being cities or towns or portions of cities or towns, as are attached to or included for electoral purposes in cities or towns or portions of cities or towns. And other places. S. 4. (s)

6. Whenever two or more persons (t) are, either as Tenancy in common or

Being of the trade or occupation of a *fisherman*; (2) Being the *owner* of real property; and (3) Being the *owner* of personal property described as "boats, nets, fishing gear, and tackle." The total value of such real and personal property must be \$150.

(q) The "tackle, apparel, and furniture" of a vessel include equipments necessary for the purposes of her voyage and adventure: *Hall v. Yates*, 1 P. E. I. 331.

(r) See notes to the several clauses of this section on pp. 54-83.

(s) See notes to the several clauses of this section on pp. 84-89.

(t) Prior to modern legislation respecting the class of voters provided for in this section, it was held that joint-tenants, and tenants-in-common, of freehold estates, and for freehold interests, had a right to vote; the former as being seised individually *per my et per tout*; and the latter as having each a separate interest in their respective shares; and this notwithstanding the "Splitting Act," 7 & 8 Wm. III. c. 25, s. 7, which provided that "no more than one single voice should be permitted to vote for one and the same house or tenement." Coparceners, however numerous, have but one estate among them; but, subject to the sufficiency of value, each may vote: *Warren on Elections*, 70. Where seven persons were rated together for one joint sum, all being in the occupation of the premises: *Held*, entitled to vote: *Cricklade (Jacobs's Case)*, 2 Lud. 538.

other joint business partners, (u) joint tenants, (v) tenants in com-
interest.

(u) A partner combines in himself the two characters of principal and agent, as where a man orders another to carry on trade, or to buy and sell, and to pay over the profits to him, he is the principal, and the person so employed is the agent. This is the true principle of partnership: *Cox v. Hickman*, 8 H. L. Cas. 268. To constitute a partnership the parties must participate as well in the losses as in the profits: *Grace v. Smith*, 2 W. Bl. 1000. Participation in profits is not conclusive evidence of the existence of a partnership. It is very cogent evidence; but the effect of a participation in profits may be outweighed by other circumstances: *Ex parte Tennant*, 6 Ch. D. 303. Notwithstanding a stipulation that the parties should not be partners, an agreement to share the profit and loss of a business, entitles each party, as against the other, to the general rights of a partner: *Pawsey v. Armstrong*, 18 Ch. D. 698. Where A, having neither money nor credit, induced B to order with him certain goods upon an adventure, and agreed that if any profit should arise B should have one half; B ordered the goods and paid for them: *Held*, not a partnership *inter se*, only an agreement for compensation for trouble and credit: *Hesketh v. Blanchard*, 4 East 143. An agent who is paid by a proportion of the profits of an adventure is not a partner in the goods: *Meyer v. Sharpe*, 5 Taunt. 74. A partner in a firm agreed to give his clerk one-third of his (the partner's) own share in the profits. The other partners assented: *Held*, that this did not make the clerk a partner: *Holme's Case*, 2 Lewin's C. C. 256. Where, under an agreement that the plaintiff should apply his whole time to the business, and receive therefor a salary and a proportion of the profits, but if, in any year there should be a loss, the defendant only should bear it, and if, after the division of profits, any unexpected claim should be made upon them, the plaintiff should not be called upon for more than the amount he should receive as profit: *Held*, a contract or hiring and service, and not a partnership: *Ross v. Parkyns*, L. R. 20 Eq. 331. Where a partnership has been formed for the purchase and sale of lands, the land is in the nature of the stock-in-trade of the partnership, and the Court will deal with it as partnership property, although the ownership has not been in all the members of the firm: *Dale v. Hamilton*, 5 Hare 368; s. c. 11 Jur. 163, 574.

(v) "Joint tenants are, as if a man seised of certain lands or tenements, and thereof enfeoffeth two or three or more, to have and to hold to them and their heirs; or leaseth to them for term of their lives, or for term of another's life,—by force of which feoffment, or lease, they are seised,—these are joint tenants:" 1 *Co. Litt.* 728. Joint tenancy cannot arise by descent or act of law, but merely by purchase or acquisition by the act of the party; and unless that act be one and the same, the two tenants would have different titles; and if they had different titles, one might prove good and the other bad, which would absolutely destroy the jointure: 2 *Bl. Com.* 181. An estate in freehold cannot stand in jointure with a term of years; and a reversion of a freehold cannot stand in jointure with a freehold, and inheritance in possession: 1 *Co. Litt.* 731. Neither can one joint tenant be tenant-

mon, (w) or by any other kind of joint interest, (x)
the owners, or occupants of any lot or portion of a

in-fee, and the other tenant-in-tail; for unity of interest is one of the properties of a joint estate: *Ibid. n.* The properties of a joint estate are unity of title, unity of interest, unity of time, and unity of possession: *Ibid.* Since the recent legislation affecting married women's property, it has been held that under a devise to husband and wife the estate vests in them by moieties as joint tenants, and not as tenants by entireties: *Re March*, 24 Ch. D. 222.

(w) The essential difference between joint-tenants and tenants-in-common is, that joint-tenants have the land by one title, and in one right, and tenants-in-common by several titles, or by one title and by several rights: 1 *Co. Litt.* 758. And because they come to such lands and tenements by several titles, and not by one joint title, and their occupation and possession shall be, by law, between them in common, they shall be called tenants-in-common: *Ibid.* The property is common to both of them, their occupation is undivided, and neither of them knoweth his part in several: *Ibid.* 759. The only unity required of tenants-in-common is that of possession; for one may hold his part in fee, the other in tail, or for life; so that there is no unity of interest. One may hold by descent, another by purchase; so that there is no unity of title. One's estate may have vested for fifty years, the other's but yesterday; so that there is no unity of time: 2 *Bl. Com.* 191.

(x) "Parceners are of two sorts, to wit: parceners according to the course of the common law, and parceners according to custom. Parceners after the course of the common law are, where a man or woman seised of lands or tenements in fee simple, or in tail, hath no issue but daughters, and dieth, and the tenements descend to the issues:" 1 *Co. Litt.* 678. Parceners by custom are where a man seised in fee simple, or fee tail, of lands of the tenure of gavelkind, and hath issue divers sons, and die, such land shall descend to all the sons by the custom: *Ibid.* 680. Many times parceners are called coparceners; the tenancy is an inheritance to be divided: *Ibid.* 679. The properties of coparceners in some respects resemble those of joint tenants; for they have the same unities of interests, title, and possession: *Ibid.* 681 *n.* Coparceners always claim by descent, but joint-tenants always by purchase. No lands can be held in coparcenary but estates of inheritance, which are of a descendible nature; whereas not only estates in fee and in tail, but for life or years, may be held in joint tenancy: 2 *Bl. Com.* 188. There is no unity of time necessary to an estate in coparcenary; the estate may vest in each of the coparceners at different times: 1 *Co. Litt.* 680 *n.* If an estate be made to a man and a woman, and their heirs, before marriage, and afterwards they marry, the husband and wife have moieties between them: *Ibid.* 740. Where husband and wife take an estate to themselves jointly during the coverture their interest was denominated a tenancy by the entireties: *Ibid. n.* But now it is a tenancy by moieties: *Re March*, 24 Ch. D. 222.

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ify if suffi-
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lot or parcel of real property in any electoral district, (y) each of such persons whose share therein is suffi-

(y) The Imperial Acts of 1832 (3 & 4 Wm. IV. c. 45, s. 29), and of 1867 (30 & 31 Vic. c. 102, s. 27), are similar to the Ontario and New Brunswick Acts (see note (z) *post*), as to the mode of dividing the value of the joint property so as to qualify the co-owners as voters. The Act of 1832 provides that if the clear yearly value is of an amount which, when divided by the number of occupants, will give a qualification to each, then each occupier may vote. The Act of 1867 provides that where "the aggregate ratable value is such as would, if divided amongst the several occupiers, so far as value is concerned, confer on each of them a vote," each is entitled to be registered. But under that Act only two of such joint-occupiers could be registered, unless the property had come to them by descent, &c., or unless they were *bona fide* partners in business thereon. The following cases under these Acts may be referred to: Premises were jointly rated under the names of two persons; no common purpose for occupying the premises was shown, but by agreement each occupied distinct portions, paying rent and taxes for the same: *Held*, a joint occupation: *Johnston v. Flood*, 5 Ir. L. R. 49. Premises in Westland Row, Dublin, were occupied by a parish priest and seven curates; each had separate apartments and exclusive use thereof; the parish priest was irremovable, but the curates were liable to be removed: *Held*, that they were entitled as joint occupiers to be entered upon the voters' list, as they were tenants at will of premises of sufficient value to give a qualification to each: *Meyler v. Metcalfe*, *Ibid.* 54; s. p. *Reg. v. Mayor of Belfast*, Ir. R. 8 C. L. 423. Premises were devised to one of four brothers, subject to charges for the other three. The four brothers continued the business under the old style of their father's firm, and all, except one, the claimant, occupied the premises. He was held not entitled to be registered as a joint occupier: *Reardon's Case*, 6 Ir. L. R. 420. The sole lessee of a mill took his three sons into partnership, and all resided upon the premises. The rent was charged to the partnership account, in which the four shared equally, but the receipts for the rent were given in the name of the lessee alone: *Held*, that the sons were qualified: *Rogers v. Harvey*, 5 C. B. N. S. 3. The lessees of a house, taken for the purposes of the Corn Law League and in charge of the servants of the association, were held to be occupiers, as distinguished from the numerous other members of the association who had subscribed to the funds (out of which the rent was paid) and who, as well as the lessees, transacted the business of the association at the house: *Luckett v. Bright*, 2 C. B. 193. A tenant of a dwelling house, otherwise qualified within the meaning of the Act, does not become a joint occupier by letting a portion of such house to a lodger: *Brewer v. McGowen*, 39 L. J. C. P. 30. The following cases have been decided under the Provincial Acts: Where four joint tenants and a doweress, whose dower had not been assigned to her, were assessed jointly, as occupants of real property, for \$900, the franchise value being \$200 per voter: *Held*, that the interest of the widow should not be deducted from the assessed value, and that the four joint tenants were entitled

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cient in value, (z) or in the case of tenants, in amount of

to vote : *Brockville (Gilroy's Case)*, 7 Ho. E. C. 129. Two partners occupied premises the title to which was vested in one of them ; the assessment being sufficient to give a qualification to each, both partners were held qualified to vote : *South Grenville (Fitzgerald's Case)*, Ho. E. C. 163. Where only one of two joint tenants was assessed for the joint property : *Held*, not entitled to vote : *Ibid.* A and B possessed conjointly and by equal moieties a property valued at \$300. Neither could be put upon the electoral list, as the qualification for each was \$200. Neither could they, if they had been conjointly, and by equal parts, tenants of a property for which they paid annually \$20 to \$30, the qualification being \$20 each. But if A owned one-third of the property, and B two-thirds, then B, as the owner of \$200 of the assessed value of the property, could be put on the list and vote : *Re Kamouraska Electoral Lists*, 3 Q. L. R. 308.

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(z) The Provincial legislation on this subject has not been uniform. Before Confederation, C. S. C. c. 6, s. 4, subs. 3, provided that each partner in business, joint tenant, or tenant-in-common, or *par indivis*, if his share in the joint property was sufficient to entitle him to vote, should, in order to be entered on the assessment roll, and from thence to the voters' list, establish his right and the value of his share in the joint property, before the Court of Revision, or County Judge. This was amended by 29 & 30 Vic. c. 13, s. 12, by striking out the condition requiring the parties to go before the Court of Revision, or County Judge, and by providing that the parties assessed, as aforesaid, should be presumed to be equally interested in such property, unless the contrary was shown. The provision that the actual value of the individual share of the partner, joint tenant, or tenant-in-common, in the joint property determines the qualification, has not been adopted in Ontario or New Brunswick ; but it has been in Quebec and Manitoba ; while in Nova Scotia the shares are to be apportioned according to the judgment of the assessors. Ontario (48 Vic. c. 2, s. 3, subs. 3) provides that where real property is owned or occupied jointly by two or more persons, and is rated at an amount, if equally divided between them, to give a qualification to each, then each of them is to be entitled to vote. Quebec (38 Vic. c. 7, s. 9) requires the share of each of the co-owners, &c., to be ascertained, and to be of sufficient value to confer upon each the electoral franchise ; and provides that "he whose share does not amount to the value required for the electoral suffrage shall not be entered, nor be an elector." Nova Scotia (48 Vic. c. 2, s. 5) provides that joint owners, &c., are to be entered in the assessors' returns, "and the property apportioned among them to the best of the assessors' judgment, and that such apportionment shall have the same force and effect as if each of such persons had been individually assessed in the amount set opposite their respective names." New Brunswick, (C. S. N. B. c. 4, s. 9) is similar to the Ontario Act, and provides that "when a firm is assessed in respect of property or income, sufficient to give each member a qualification, the several persons composing the firm shall be inserted in the list." And by c. 100, undivided interests in real estate are to be assessed

rent, according to the provisions of this Act, (a) to qualify such person as a voter in respect of real property, (b) shall be entitled to be registered on the list of voters, and to vote in respect of such share as if it were held in such person's individual name, and not jointly with one or more. (c)

Income
voters

7. Person qualified under this Act as voters in respect of income, (d) shall only be registered as voters and vote

among the owners respectively, if known, but if not, then to such as may be known. *Manitoba* (C. S. M. c. 3, s. 62) provides that if the share of each co-owner, &c., is sufficient to confer upon him the right to vote, each of such persons shall be deemed to be an elector; "but he whose share does not amount to the value required to confer the right to vote, shall not be so entered, nor be an elector." The Quebec, Nova Scotia, and Manitoba Acts expressly exclude the members of a corporation from being entered on the voters' list in respect of the corporate property. The section of the Act here annotated, requiring the share of each partner, co-tenant, &c., in the joint property to be sufficient in value to qualify, is substantially the same as that contained in the Quebec and Manitoba Acts above referred to. See, as to Prince Edward Island, note (g) to s. 9, *post*.

(a) The rental value is uniform in all electoral districts and is, monthly \$2, quarterly \$6, half-yearly \$12, or yearly \$20. See notes pp. 67-72, and 82-84.

(b) The locality of the property determines the ratio of value to qualify for a vote. In cities and towns the actual value of the share of each co-owner and co-partner (if the partnership is "owner" of the real property) must be \$300; or of the co-occupant and co-partner (if the partnership is "occupant" of the real property) must be \$200. In municipalities and places other than cities and towns, the share of each, whether "owner" or "occupant," must be of the value of \$150. And the sons of each such co-owner may claim the right to be entered on the voters' list, if the father's share is sufficient to qualify them according to the prior provisions of this Act, and if otherwise qualified as to residence. See p. 78.

(c) The entry of such person's name on the voters' list would be, for the purposes of the vote, a severance of the joint tenancy or partnership, &c.; but such entry would not be affected by a partition of the real property, or by a dissolution of the partnership, provided either event happened after the qualifying period fixed in the Act.

(d) There are fewer technical rules affecting the qualifications for this class of voters than for any of the others. It will therefore be found easier

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in the polling district (e) where they reside at the time of registration, (f) and persons qualified otherwise than on And other voters to be registered

to register as an income voter than under any other qualification. Three requisites qualify: (1) Receipt of an income of \$300 a year from earnings in any office, employment or investment in Canada; (2) Residence for one year within the Electoral District, and (3) Residence therein at the time of registration. The *income* may have been obtained from various employers or in various electoral districts in Canada; and while the *residence* is required to be "within the Electoral District," it is not limited to the occupation of any particular property, or to any one locality, within such electoral district. See notes pp. 76-78, and notes as to residence, pp. 74 and 76, and note (f) *post*.

(e) The term "polling district" is changed in s. 24 *post*, to "polling division," which is the more appropriate term for subdivisions of an "Electoral District."

(f) In addition to the cases on "Residence," pp. 74 and 76, the following may also be referred to: A being employed as attendant upon a gentleman, who required constant attendance in the day time, occupied premises with the gentleman in K, where he usually slept, but was not bound to do so. He had also lodgings at C, where his wife and children resided, and where he could sleep at any time, and where he slept at least once a week: *Held*, entitled to vote at C: *Taylor v. St. Mary Abbott*, L. R. 6 C. P. 309. A man who has two houses, and lives at each when he pleases, would reside at both houses within the meaning of the Act: *Per Bovill, C. J., Ibid.* A rented premises in London as sole tenant for the requisite twelve months. He had also a house at D, where he kept an establishment of servants all the year round; but when in London he occupied the rented premises, and had done so at intervals for two months out of the twelve: *Held*, a sufficient residence in London to qualify: *Bond v. St. George, Ibid.*, 312. He had no wife or family, or servants residing there in his absence, but still he was sole tenant, with a power to go there when he pleased, which he exercised from time to time: *Per Bovill, C. J., Ibid.* Four militiamen who were enrolled in the militia, and had been absent from the city on militia service from three to five years, except when they returned for a short time each year on furlough, voted at an election. Their wives and children occupied premises rented by them in the city: *Held*, under a statute requiring voters to be inhabitants of the city for six months before the election, that they were qualified to vote: *Rez v. Mitchell*, 10 East. 511. Later decisions seem to establish a contrary rule. An officer of the army, serving with his regiment in another locality had rooms set apart for his exclusive use in his mother's house at E, and when he obtained leave of absence he resided there usually for three months in each year: *Held*, that being an officer subject to the will and pleasure of the Crown, he was not *sui juris*; and as he could not return except on leave, there was not such an intention of returning to E as to con-

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income shall only be registered as voters and vote in the polling district where the real property in respect of which

stitute a constructive residence : *Ford v. Hart*, L. R. 9 C. P. 273. A man in the military service of the Crown, and otherwise qualified as a voter in E, was absent on duty for twenty-one days of the qualifying period at O : *Held*, that as he was under a legal obligation not to return to E while on duty at O, he was not qualified to vote in E : *Atkinson v. Collard*, 16 Q. B. D. 254. "We were pressed on the one side by *Ford v. Hart* (*supra*), and on the other side by the case of *Rex v. Mitchell*, (*supra*). In our judgment this case falls within the principle of *Ford v. Hart*. If the two cases are inconsistent, we think the later decision should be followed : " *Per Cave, J., Ibid.* "We think that actual inhabitancy during every one of the 365 days is not necessary, and that it is sufficient if the claimant can make out a constructive inhabitancy. But in order to make out a constructive inhabitancy there must be an intention of returning after a temporary absence, and a power of returning, at any time, without breach of any legal obligation : " *Ibid.* Where an inhabitant householder, qualified as a voter in N, left it and resided in another borough for fourteen weeks, it was held, on his return to N, that his claim to vote in N was lost, as he had relinquished the franchise he possessed there, by the break of residence : *Jeffrey v. Kitchen*, 7 M. & Gr. 99 ; s. c. 8 Jur. 138. A freeholder in Exeter who had a bed-room kept in his father's house there for his exclusive use, was absent during the statutory period, serving as a clerk under articles to a solicitor in London : *Held*, that being bound by the articles of service he could not be held to have had either the liberty or intention to return whenever he liked, and therefore had not resided in Exeter for the qualifying period : *Ford v. Drew*, 5 C. P. D. 59. He had not the power to leave London without breach of contract : *Per Grove, J., Ibid.* He must be assumed to have intended to keep his contract ; and so must be assumed not to have had the intention to return : *Per Lindley, J., Ibid.* Undergraduates of Oxford and Cambridge who occupy rooms in these colleges from which they are absent during the vacations, without the right to reside in or visit them, except by leave of the college authorities, cannot be held to have resided, or been inhabitants, or to have occupied premises for twelve months in the cities named : *Tanner v. Carter*, 16 Q. B. D. 231. "The authorities as to constructive residence have no application, as soon as it is shewn that the occupier cannot return to the premises during part of the year, at his own option : " *Per Cave, J., Ibid.* Unmarried men who have fully severed the parental or home relation, and who have entered the world to labor for themselves, usually acquire a residence in the district where they are employed, if they are honestly pursuing their employment there, with no fixed residence elsewhere : *Allantown*, Brightly on Elections, 475. The mere fact that a person is willing to swear, and does swear, that he considers the district his home, is not sufficient to entitle him to vote, if the facts and circumstances satisfy the Court that his home is elsewhere : *Ibid.* In the ancient rights of voting by reason of "inhabitancy," that term was considered as implying a *bona fide* residence : *Elliott on Electors*, 200. For

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they are qualified is situate ; (g) but when the property is partly within one polling district and partly within another, (h) although all within one electoral district,

If in other polling districts ;

the exercise of a personal franchise, a person can only be said to be conversant where his bed is, for in that part of the house he is most conversant : 2 Co. Inst. 122.

(g) The intention of the Act is to give persons qualified to vote in respect of real property the right to vote in every electoral district in which they are so qualified ; but to be registered "only" in the polling district where their real property is situated in each such electoral district. Until 1885, a similar provision existed in Ontario ; and it is still a provision of the Ontario Municipal Act in respect of voters at municipal elections. One already registered in an electoral division for one set of premises, cannot while his qualification for such registration continues, be entered on the register for another set of premises a second time : *Re Druitt*, 1 Cr. & Dix (Ir.) 92. It appears that great mischief, inconvenience, and fraud, would necessarily result from suffering such double or treble registries. The Legislature only contemplated a single registry for each person, and never intended that a man having several distinct premises, out of which he could qualify as a voter, should be allowed to register on each of such premises ; he not giving any reason for claiming such second right of registry : *Per Pennefather, B.*, in *Re Neale*, *Ibid.* 269. The objection of a previously subsisting registry is a tenable one : *Re Brennan*, *Ibid.* 608. If the person objected to appears on more than one list, the party objecting should point out on which list he objects to the name being retained : *Elliott on Electors*, 317. When the law requires a voter to vote where he resides, place becomes an element of suffrage for a twofold purpose : without the election district residence, no man shall vote ; but having that residence, the right it confers is, to vote in that district : *Chase v. Miller*, 41 Penn. St. 403. The law intends that the voter, in *propria persona*, should offer his vote in his appropriate election district in order that his neighbours might be at hand to challenge his right to vote if it were doubtful : *Ibid.* The effect of this section in British Columbia and Prince Edward Island, under the manhood suffrage qualification of these Provinces, will be referred to the notes to s. 9, *post*.

'h The Ontario Voters' List Act (R. S. O. c. 9, s. 2 subs. 8, now varied by 48 Vic. c. 3, s. 2), provides that when the property of the voter is partly in one polling division and partly in another, the name of the voter is to be entered in each of the divisions in which any part of the property is situate. The provisions of the Ontario Election Act, to how voters are to be registered on the voters' lists in respect of their property, and as to the manner in which they are to vote, are directory : *Prescott*, Ho. E. C. 780. Where the name of a voter was accidentally omitted from the voters' list for the polling division No. 1 in which his property was situate, and entered on the voters list No. 2 ; but his vote was received at No. 1, though not on the list, his vote

Where voter
desires.

the person qualified in respect thereof shall be entitled to be registered and to vote in either of such polling districts for which he may desire to be registered as a voter. (i)

was held good on the ground that he should not be disfranchised because of the mistake of the officer in making up the list: *Brockville*, Ho. E. C. 129. A voter was assessed for real property in two municipal wards of a town. Before the revision he parted with his property qualification in one of the wards, but his name appeared on the voters' lists for both wards. At the election he voted in the ward in which he had sold his property: *Held*, that his vote might be supported on the other qualification, which, if the voter had voted on it originally, would have made it necessary for him to vote in another polling division: *Lincoln* (2), (*Gibson's Case*), Ho. E. C. 500. By the Imperial Reform Act (2nd & 3rd Wm. IV., c. 45), the returning officer was required to supply sufficient booths for polling the votes; and it was provided that no person should be admitted to vote at any election except at the booth allotted for the parish, district, or part wherein his property was situate, and in respect of which he claimed to vote. A voter voted at booth E instead of booth C, where he ought to have voted. *Held*, that though the voter voted at the wrong polling booth, his vote was not invalidated: *Cambridge (Amey's Case)* Wolf. & Dew 54. A voter was objected to as not being duly assessed, and as having no freehold in the place (Edmonton), where he polled his vote. It was proved that he possessed the requisite qualification in Hackney, which had a separate polling booth: *Held*, that although the voter had been admitted to vote at the wrong booth, he did not thereby lose his vote: *Middlesex (Baker's Case)*, 2 Peck. 57. The sheriff did not divide the burgh into districts as required by statute, nor did he assign the persons being voters living within particular portions of each ward, to each polling place, but he divided the entire list of voters in each ward, alphabetically, and allotted one portion of the alphabet to one polling place, and so on. There was no evidence to shew that the fairness of the result was affected by the arrangement made: *Held*, that these irregularities did not avoid the election: *Greenock*, 1 O'M. & H. 249.

(i) The object of this provision is evidently to guard against the chances of personating or duplicating votes at an election, by requiring the voters who appear to be qualified in one or more polling districts to be registered only once within the electoral district. But such voters have the right to select the polling district in which they may desire to be registered. Where any do not exercise this right, it may be proper, before the final revision of the voters' lists, to serve them with a notice or summons, to the effect that their names appear in the voters' lists of various polling districts (naming them), within the electoral district, and requiring them to attend before the Revising Officer and select the polling district in which they desire to be registered and to vote; and warning them that, in default of their so attending, the Revising Officer will hold that their non-attendance before him at the time and place

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appointed, will be construed by him as a desire on their part to be registered and to vote in the particular polling district named in the notice or summons served upon them. Where a plaintiff, who was not bound to elect whether he would impeach a by-law, or an award, on being called upon by the Court to elect, elected to impeach the award: *Held*, that he could not afterwards complain of having been forced to elect: *Harding v. Cardiff*, 2 Ont. R. 329. If a person bound in the alternative to do one of two things by a certain day, let the day pass without making an election, by performing one or the other alternative, he loses his election: *McNitt v. Clark*, 7 Johns. N. Y. 465. By the Imperial Acts of 1878 (41 & 42 Vic. c. 26, s. 28, subs. 14), and 1885, (48 Vic. c. 15, s. 5) multiple entries of a voter's name on the voters' lists are not allowed. Where the name of a voter appears more than once on such lists, the Revising Barrister is to enquire whether such entries relate to the same person, and if so, he is to retain one of the entries, and note against the other that such person is not entitled to vote in respect of his other qualifications. But the voter may by a notice in writing select the entry he desires to retain for voting. If any person should by a claim to be registered in a wrong division, or otherwise, fail to be registered in the right division, there is no power to rectify the mistake, and the vote of such a person cannot be given in any division until it has been rectified at the next registration: *Lely & Foulkes on Elections*, 239. Where a voter's name had been struck off from a borough list instead of from the county list, by inadvertence of the Revising Barrister, the voter's name being on both lists: *Held*, that the Court had no power to give him relief: *Re Allen*, 6 C. B. N. S. 334. Two qualified voters of the same name were entered on the voters' lists used at an election. Voter No. 1 tendered his vote at his right booth, but was told he had voted before, Voter No. 2 having previously voted there, although it was not the right booth for him to vote at: *Held*, that Voter No. 2 should be struck off the poll book, as his voting at the wrong booth was not a mistake, but the fault of the voter and the poll clerk: *Oldham (Scholefield's Case)*, 1 O'M. & H. 163. See also *Chilcott v. Bullen*, 46 L. T. N. S. 63. The Dominion Elections Act provides (s. 41) that "each elector shall vote at the polling station of the polling district in which he is qualified to vote, and no other;" and (s. 52) that "no person shall vote more than once in the same electoral district at the same election." See prior note (g.)

(j) This is in addition to the "occasional absence" provided for in the proviso to subs. 7 of s. 3, and the provisos to subs. 7 and 8 of s. 4. See note (e) p. 78, *ante*. Where on the voters' list under "place of abode" a voter was stated to be "travelling abroad," his name was rightly retained on the voters' list: *Walker v. Payne*, 2 C. B. 12, s. c. 9 Jur. 1014. Otherwise persons living or travelling abroad on public business, or for pleasure, might lose their votes: *Rogers on Elections*, 143. A physical difficulty, not a legal

or as students.

occupations, or as students in any institution of learning (*k*) within the Dominion of Canada, shall be considered as spent at home.

Provincial
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9. In the Provinces of British Columbia and Prince Edward Island, besides the persons entitled to be registered as voters and to vote under the foregoing provisions of this Act, (*l*) every person who at the time of the passing of the same :—

one, as where a man cannot go home every evening, as in the case of a man travelling on the continent, will not disqualify : *Atkinson v. Collard*, 16 Q. B. D. 254. Where a person was absent from home on military duty for twenty-one days of the qualifying period : *Held*, not qualified : *Ibid.* Where the absence from the residence is compulsory for a portion of the qualifying period, as in the case of Oxford and Cambridge undergraduates, who cannot reside in or visit their rooms in their colleges during vacations, without leave of the college authorities, no right to vote exists : *Tanner v. Carter*, 16 Q. B. D. 231. Under the election laws of the United States a student at college who has a house elsewhere, and resides at the institution for the sole purpose of education, does not thereby acquire the right to vote in the district in which the college is situated : *Allentown*, Brightly on Elections, 468. It was never pretended that the student acquired a residence at the place of the college, so as to become a qualified elector, liable to taxation and to the performance of municipal duties. The parental home, or the locality from whence the student came, was accepted as the district in which he was entitled to vote : *Ibid.* The fact that a man came into the place where he claims a residence for the sole purpose of pursuing his studies at a school or college there situate, and has no design of remaining there after his studies terminate, is not necessarily inconsistent with a legal residence, or want of residence in such place. This is to be determined by all the circumstances of the case. Among such circumstances, the intent of the party, the existence or absence of other ties or interests elsewhere, the dwelling-place of his parents, or, in the case of an orphan just of age, of such near relatives as he had been accustomed to make his home with during his minority, would, of course, be of the highest importance : *Putnam v. Johnson*, 10 Mass. 488.

(*k*) There is no definition in this Act as to the meaning of this expression; but articulated clerks to solicitors would not be within the equity of this provision. See *Ford v. Drew*, 5 C. P. D. 59; also *Tanner v. Carter*, 16 Q. B. D. 231, referred to in note (*f*) on p. 98, *ante*.

(*l*) See notes to ss. 3 and 4, *ante*. It is conceded that, in the two Provinces named, manhood suffrage is the prevailing franchise. And but for a provision in the British Columbia Act of 1876, 39 Vic. c. 5, disqualifying persons from voting, who permit their names "to remain on more than one register,"

(1.) Is of the age of twenty-one years (*m*) and is not Agc.
by this Act or by any law of the Dominion of Canada Not dis-
disqualified or prevented from voting; ; (*n*) and qualified.

(2.) Is a British subject by birth or naturalization, (*o*) Allegiance,
and resident in the Province, (*p*) and is entitled to vote Qualified by
in the said Provinces respectively by the laws now sever- Provincial
ally existing in the same. (*q*) laws.

the effect of the above provision would be to give multiple votes to those who are owners of real property in other than the electoral district in which they reside. In Prince Edward Island electors are required to vote in the polling divisions where they reside, or where they have property, and not elsewhere. See note (*q*), *post*. An affirmative statute giving a new right does not destroy a previously existing right: *O'Flaherty v. McDowell*, 6 H. L. Cas. 142. A general Act is to be construed as not repealing a particular one by mere implication: *Maxwell on Statutes*, 157. The general statute is read as silently excluding from its operation the cases which have been provided for under the special one: *Ibid.* 158. An Act abridging a public right, must be strictly construed: *Bourke v. Murphy*, 1 P. E. I. 126.

(*m*) See note (*a*), p. 54.

(*n*) See notes (*c*) and (*d*) pp. 55-59, *ante*, and s. 11, *post*.

(*o*) See notes (*e*) and (*f*) pp. 59-64, *ante*.

(*p*) The limitation to the franchise to residents in the Provinces above referred to does not apply, in the other Provinces, to "owners of real property;" but it is an essential requisite in the cases of all other classes of voters. "Residence" in the electoral district is an essential element in the qualification of voters in British Columbia. See note (*l*) *ante*. But it does not appear to be required in Prince Edward Island. See 34, Vic. c. 34, and note (*q*) *post*. Where a grant of land in Prince Edward Island was made to K, a resident abroad, who never came to the island: *Held*, that being a resident abroad at the time of the grant, the presumption of law was, in the absence of evidence to the contrary, that he remained abroad in the place of his domicile: *Tullidge v. Orr*, 1 P. E. I. 108. See further the notes on "Residence," pp. 74-77, and note (*f*) p. 97.

(*q*) The further qualifications, besides age, allegiance, and residence in the Provinces named, are: *British Columbia*—Persons resident in the Province for twelve months, and for two months of that period within the electoral district in which they claim to vote, and who are duly registered as voters: 39

To be registered as voters.

Shall have a right to be registered as a voter and to vote so long as he shall continue to be qualified to vote

Vic. c. 5 B. C. The disqualifications are : (1) Chinamen, and (2) Indians : (38 Vic. No. 2), (3) Judges ; (4) Stipendiary Magistrates ; (5) Police Magistrates ; (6) Sheriffs ; (7) Constables ; (8) Police officers ; (9) Customs officers ; (10) Excise officers ; (11) Dominion officers receiving annual salaries (except post office employes) ; (12) Provincial officers receiving annual salaries ; (13) Public school teachers : (42 Vic. c. 22, 1878), and (14) persons permitting their names to remain on more than one register of voters : (39 Vic. c. 5.) *Prince Edward Island* : 24 Vic. c. 34 (repealed by 41 Vic. c. 14, but revived and re-enacted by 42 Vic. c. 2). (1) Persons residing twelve months before the *teste* of the writ of election in the electoral district in which their property qualification is situate (s. 13), and who own or have a freehold estate in a water lot, common lot, town lot or pasture lot, or in a dwelling house, warehouse, shop or other buildings, or in a farm or piece of land within any town, common, or royalty of the yearly value of 40s. : (*Ibid*, subs. 1). (2) Persons in the *bona fide* use and occupation or actual possession of any dwelling house, warehouse, shop, or other building, or any farm or piece of land, within any town, common, or royalty of the yearly value of 40s. : (*Ibid*, subs. 2). The town and royalty of Princetown are excluded from subs. 1 and 2. (3) Persons who own or have a freehold estate, or are in the *bona fide* use and occupation or actual possession of any dwelling house, warehouse, shop or other building, or any farm or piece of land, of the clear yearly value of 40s. : (*Ibid*, subs. 3.) (4) Persons liable to perform and actually performing statute labour on the public roads ; or who have commuted statute labour for money and have paid the same ; or who have been specially exempted from statute labour, by statute, on account of holding any office, situation or employment ; provided such persons have resided in the polling division in which they claim to vote for twelve months before the *teste* of the writ of election (*Ibid*, subs. 4). Only one of several joint tenants, tenants in common, co-parceners, or partners in business may vote, unless, each individual interest in the property be of the yearly value of 40s. (s. 14.) (5) Persons in possession or entitled to leaseholds in lands worth, with improvements, £35 may vote, although the yearly rent is less than 40s. (s. 15.) Persons qualified to vote in the electoral district in which they reside, shall vote therein in the polling division in which they reside and not elsewhere (s. 19). Persons qualified to vote in any electoral district in which they do not reside, shall vote in the polling division in which their property is situate, and not elsewhere (s. 20). By 19 Vic. c. 21, P. E. I., the right to vote is given to every (1) mortgagor, or (2) *cestui qui trust*. in actual possession, by himself or tenant, of land of the yearly value of 40s., notwithstanding the mortgage or trust outstanding ; and to (3) the husband of a dowress, where the dower has been set off and reduced into possession, and is of the yearly value of 40s. (s. 29). Persons owning or occupying premises in immediate succession during twelve months, to have the right to vote (s. 22). Votes given in a polling division wherein the vote ought not to be given, are to be struck off the poll, and not counted (s. 25).

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under the provisions of the said last mentioned laws and no longer. (r)

10. Except the persons duly qualified (s) and registered as voters under this Act, (t) no person shall be entitled Persons on list of voters

(r) Negative words will make a statute imperative : *Rex v. Leicester*, 9 D. & R. 772. The effect of this provision is to render the additional franchise qualification conferred by this Act upon voters in the above Provinces (see note (b) ante) conditional on their retention of the Provincial franchise according to the Provincial laws "now (i.e., 20th July, 1885) severally existing in the same."

(s) These words "duly qualified" might have been omitted, for there is no mode provided by this, or the Dominion Elections Act, or Controverted Elections Act, of testing whether the voters at elections are "duly qualified." By the 31st and 39th sections, *post*, the voters' lists, after final revision, are "binding on any judge or other tribunal appointed for the trial of any petition complaining of undue election or return of a member to serve in the House of Commons." The effect of this section, taken in connection with the Dominion Elections Act, is to give the right of voting to those who are registered as voters according to the voters' list, whether they are voters *de jure* or not, at the date of the election.

(t) There is no provision in the Dominion Elections Act enabling persons possessing the required qualifications, but whose names have not been entered on the voters' list, voting by tendered ballots at an election. The Ontario Elections Act (s. 102) provides that "if any person whose name is not entered on the voters' list, claims that his name ought to have been so entered, and that it has been improperly omitted therefrom," he may on taking the specified oath, put in a tendered ballot. Cases may occur where a portion of the legal votes, without their fault, and in spite of due diligence on their part may be denied the privilege of registration. In elections under a law which imperatively requires registration as a qualification for voting, if the registration has been denied by the wrongful act of the registering officer, it has been held that a voter's only remedy is by an action against the registering officer for damages. Where, however, a portion of the voters of a given district are unjustly deprived of or denied the privilege of registration, and another portion are duly registered and permitted to vote, the entire poll may be rejected if the votes cannot be counted, and are sufficiently numerous to affect the result of the election : *McCrary on Elections*, 13. Certain persons qualified to vote whose names were entered on the assessment roll but omitted from the voters' list, tendered their votes at an election but were refused. A majority of them stated to the deputy returning officer that they desired to vote for the petitioner, who had a majority without them : *Held*, no ground for setting aside the election : *North Victoria*, Ho. E. C. 671. The Ballot Act (Imp.) 35 & 38 Vic. c. 33, contains a similar

to vote at
elections.

Elections
held before
revision of
lists.

to vote at any election for the House of Commons of Canada after the time when the duplicates of the first list of voters, finally revised and certified as hereinafter provided, for the electoral district for which the election is to be held, shall have been forwarded to the Clerk of the Crown in Chancery at Ottawa, as also hereinafter provided; but at any election held before the time aforesaid, the voters shall be those entitled to vote thereat under the laws now in force, which shall continue to apply to such election and all proceedings thereat or relating thereto. (u)

WHO SHALL NOT VOTE AT ELECTIONS.

Disqualifica-
tion of per-
sons as
voters.

11. The following persons shall be disqualified and incompetent to vote at any election to which this Act applies, (v) except that the persons or officers named in

provision to the above: "A person shall not be entitled to vote unless his name is on the register of voters for the time being in force for such county or borough" (s. 7.)

(u) The effect of this provision is to retain s. 40, of the Dominion Elections Act in force in particular electoral districts, until the lists of voters, revised and certified under this Act, shall have been forwarded to the Clerk of the Crown in Chancery at Ottawa, and until after the publication of the notice (H) in the *Canada Gazette* (s. 29). The publication of such notice operates, as to the electoral district whose voters' lists have been received by the Clerk of the Crown in Chancery, as a repeal of s. 40, within such electoral district.

(v) See notes pp. 55-57. The term "disqualified" may be used in two different senses; meaning in one case the loss of qualification, and in another the existence of legal incapacity or incompetency. Qualification is the result of the possession or ownership of property, or income of the requisite qualifying value, or of some personal qualification, such as being the son of a farmer, or of a real property owner, which, with other conditions, such as residence, confers the franchise or right to vote. The absence of any of the above requisites is a "want of qualification;" and the losing of any of them would operate as a "disqualification." Legal incapacity or incompetency means that a person who may have all the requisite qualifications as above explained, is nevertheless prohibited by statute or common law from voting at Parliamentary elections. "If persons have no right to vote they can have no right to be on the register:" *Per Byles, J., in Earl Beauchamp v.*

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paragraph "b" of this section shall only be disqualified and incompetent to vote at elections for the electoral districts for which they hold such offices or positions respectively :

(a.) The Chief Justice and Judges of the Supreme Court of Canada, the Chief Justices and Judges of the Superior Courts in the Provinces of Canada, and the judges of all other courts in the said Provinces, whether such courts are now in existence or are hereafter erected ; (w)

Judges of all Courts.

(b.) Revising officers, returning-officers, and election clerks, (x) and any person who, at any time either during the election or before the election, (y) is or has been employed at the same election or in reference

Revising and election officers, agents of candidates.

Madresfield, L. R. 8 C. P. 255. "The expression 'legal incapacity' in the statute (Imp.) cannot be confined to total incapacity to do any legal act whatever, but must comprehend legal incapacity to do this particular act of voting, though there may be capacity to do some legal acts." *Per Byles*, J., in *Chorton v. Lings*, L. R. 4 C. P. 374. See also *Stowe v. Joilliffe*, L. R. 9 C. P. 734.

(w) This is similar to s. 39, of the Dominion Elections Act, 1874. Judges being liable to be summoned as assistants to the House of Lords are ineligible for election to the House of Commons : *Com. Jour.* 9 Nov., 1605. One Thomas Thorp, a Baron of the Court of Exchequer, was Speaker of the House of Commons, in 31 Henry VI. : 5 *Comyns' Digest*, 249. But being apparently insufficiently remunerated as a Judge, he became embarrassed financially, and was taken in execution at the suit of a creditor, between two sessions of Parliament, imprisoned for debt, and so lost his Speakership : *Hakewell's Modus Ten. Parl.*, 208.

(x) This repeals so much of s. 42, of the Dominion Elections Act 1874 as authorized a Deputy Returning Officer, to vote at the polling station for which he was appointed ; and it re-enacts the disqualification of such officer which existed under C. S. C. c. 6, s. 2. The words: any person who at the time of the election is employed by any person, whomsoever, as clerk at any polling place at any such election, and expects to receive, for acting in such capacity, any sum of money, are large enough to disqualify the Poll Clerk also.

(y) The words : "before the election" carry the disqualification of paid agents much further than any previous legislation. How far the limitation of time as to acts of bribery can be adapted to apply to the employment of agents for remuneration has not been determined. In respect of the offence

And persons
paid for
services.

Returning
Officer may
give casting
vote.

thereto by any candidate or by any person whomsoever, as counsel, agent, attorney or clerk at any polling-place at any such election, or in any other capacity whatever, and who has received or expects to receive either before, during or after the said election, from any candidate (z) or from any person whomsoever, for acting in any such capacity as aforesaid, any sum of money, fee, office, place or employment, or any promise pledge or security whatever for any sum of money, fee, office, place or employment; (a) except only that the returning-officer may vote in the case of equality of votes between can-

of bribery it has been held that any act committed previous to an election, whether it is one, two or three years before, is just as much bribery as if it was committed the day before the election, or the day of election. If a man commits bribery on the first week of a Parliament, and if he asks for the suffrages of that constituency in the last week of the seven years which precede the dissolution, that act committed six years before can be given in evidence against him: *Sligo* 1 O'M. & H. 307.

(z) The Dominion Elections Act, 1874, s. 73, provides that where any person retained or employed for reward by, or on behalf of any candidate, for all or any of the purposes of such election, as agent, clerk, messenger, or in any other employment, is proved on the election trial to have voted at such election, there shall, on the trial of the election petition, be struck off from the number of votes appearing to have been given to such candidate, one vote for every person who voted at such election, and is proved to have been so retained or employed for reward as aforesaid. There is a similar clause in the Ballot Act (Imp.) 35 & 38 Vic. 33 s. 25. "The disqualifying words are very wide and it would be unsafe for any person employed for reward, in any capacity whatever, connected with 'all or any purposes of the election' to vote at it. It is to be observed that the disqualification is absolute, and not limited to voting for the candidate by whom the elector is employed." *Nicolson on Elections*, (Scot.) 27 (n.)

(a) This is in some measure similar to the Imperial Act, 7 and 8 Geo. IV., c. 37, s. 1, which disqualified voters who were employed "as counsel, agent, attorney, poll-clerk, flagman, or in any other capacity." This section gave rise to a variety of decisions not very consistent with each other; and in 1867 the following was substituted by the Imperial Act, 30 and 31 Vic. c. 102, s. 11: "No elector who, within six months before, or during, any election, shall have been employed for all or any of the purposes of the election for reward, by or on behalf of any candidate at such election, as agent, canvasser, clerk, messenger, or any other like employment, shall be entitled to vote at such election, and if he shall so vote he shall be guilty of a misdemeanor." The Ballot Act (Imp.) 1872, contains a similar provision to

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didates, where the addition of a vote would entitle any such candidate to be declared elected; (b)

(c) Indians in Manitoba, British Columbia, Keewatin Indians not qualified.

that found in s. 73 of the Dominion Elections Act, 1874. Under the earlier Act the following were disqualified: A voter employed as a check clerk: *Bedford*, P. & Kn. 136. A solicitor who accepted and acted under a retainer at an election: *New Windsor*, K. & O. 175, s. p. *Bedford*, Falc. & Fitz. 439. An elector who was to be paid for his trouble: *New Windsor*, K. & O. 173. The paid agent of one candidate cannot vote for the other candidate: *Ibid.* 174. A town clerk who read the proclamation and acted as assistant to the returning officer: *Ibid.* 185. A parish clerk employed by both parties to point out the houses of voters: *Ibid.* 246. Two town servants, paid by the town corporation, who acted as door-keepers at the candidate's committee rooms: *Ipswich*, *Ibid.* 385. A voter appointed a carrier at a salary, but who employed a deputy: *Evesham*, Falc. & Fitz. 527. Voter employed as a messenger, which was his ordinary calling: *Ibid.* The votes of the following were held good: A voter employed and paid to erect the hustings: *Ipswich*, K. & O. 387. Corporation officers employed in keeping the peace during the election, and paid out of the corporation funds: *Ibid.* 394. A voter who led the band and was paid with the other performers: *Monmouth*, *Ibid.* 421. A voter employed and paid as a messenger: *Huddersfield*, Wol. & Br. 33. The following were held disqualified under the Act of 1867: Voters whose sons were employed as messengers, their wages having been paid to their fathers: *Southampton*, 1 O'M. & H. 223. A voter remunerated for expenses incurred by him in employing assistants for his own business, while he was engaged in election matters: *Ibid.* 224. Voters employed to keep order at the doors of the polling stations: *Gloucester*, 2 O'M. & H. 62. The votes of the following were held good: Printers who were employed in delivering messages incidental to printing: *Northallerton*, 1 O'M. & H. 170. A voter who was a cabman and whose cab was hired in the ordinary way on polling day, and who was only paid his legal fare: *Southampton*, *Ibid.* 224. Under s. 25 of the Ballot Act (Imp.) 1872, and the above Acts, a voter who was fly-driver, and was employed to convey canvassers about previous to the day of election, was held not to be disqualified: *Down*, 3 O'M. & H. 116. See further *Boston*, *Ibid.* 152; *Salisbury*, 4 O'M. & H. 23. Looking at the words of the above section it seems to be clear that the disqualification intended, is in respect of paid services for a particular election, and not for elections in general, or for promoting the interests of a political party in the constituency. The question is one of fact to be decided under all the surrounding circumstances of each particular case;—such as services rendered when a dissolution of Parliament is imminent, or where the sitting member, or his opponent, has been announced as a candidate, and each is arranging his plans for a coming election.

(b) This is similar to s. 60 of the Dominion Elections Act, 1874. A similar clause will be found in the Ballot Act (Imp.) 1872, s. 2.

and the North-West Territories, (c) and any Indian on any reserve (d) elsewhere in Canada who is not in

(c) Indians in the Provinces and Territories named above, are absolutely disqualified from voting; but Indians in the other Provinces, who come within the affirmative of this negative clause, may be entered on the voters' list and vote. The following explanation of this clause was given by the First Minister in charge of the Bill in Committee:—Under the qualifying clauses, the Indian, as a person having the necessary property or other qualification, has the right to vote. Under the disqualifying clauses, it is provided that Indians in Manitoba, British Columbia, Keewatin, and the North West Territories, and any Indian on any reserve elsewhere in Canada, who is not in possession and occupation of a separate and distinct tract of land in such reserve, shall not be allowed to vote. If the Indian has a distinct and separate tract of land, marked off with his house and improvements on it, I think that is all that can be required. The Indian is obliged to prove his qualification, and to prove that he comes within the Act, the same as the white man. If the white man has a separate and distinct tract of land of which he is the occupant, and that it is of a certain value, he has the right to vote. But the Indian in such case has not the right to vote. The value of the distinct tract of land is not taken into account at all in regard to the Indian. If the white man has a vacant lot, and he is the occupant or owner of that lot, although there are no improvements whatever on it, if it is of the value of \$150, he has a vote. But in consequence of the tribal relations, and of the reserve belonging to the whole tribe and not to any individual Indian, and because no portion of it was alleged to belong to the individual Indian, the distinction was drawn against the Indian, when compared with the franchise of the white man. The land on which the Indian has his house, on which he has his improvements, his cattle, fences, and stables, is not to be taken into account at all; and he must not only have a distinct holding, but improvements belonging to himself of the value of \$150: *Commons Debates*, v. 3, (1885), p. 2370. An Act cannot be construed by reference to a debate in Parliament: *Per* Lord Selborne, L. C., in *South Eastern R. W. Co. v. Railway Commissioners*, 50 L. J. Q. B. 203. The speech of the Lord Chancellor, as head of the judiciary, given by him during a debate on the Bill in the House of Lords, may be lawfully read by counsel during his argument as an authority on the construction of the Act: *Reg. v. Bishop of Oxford*, 4 Q. B. D. 525. "It is certain that if it ought to be excluded any judge knowing of it, and excluding it, would, as soon as he left the Court, consult the *Hansard* he had before rejected:" *Per* Bramwell, L. J., *Ibid.* 550. "It has been regretted in the House of Lords that the Court of Appeal had allowed such a reference to be made in *Reg. v. Bishop of Oxford*" (*supra*): *Per* Lord Selborne, L. C., 50 L. J. Q. B. 203. See, further, note (e) p. 42, *ante*.

(d) "Reserve" means any tract of land set apart by treaty or otherwise, for the use or benefit of, or granted to a particular band of Indians of which the legal title is on the Crown: 43, Vic. c. 28 s. 2 subs. (k.) The whole estate,

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possession and occupation of a separate and distinct tract of land in such reserve, (e) and whose improvements on such separate tract are not of the value of at least one hundred and fifty dollars, and who is not otherwise possessed of the qualifications entitling him to be registered on the list of voters under this Act. (f)

Unless in possession of improved lands.
And other qualifications.

WHEN REVISING OFFICER MAY NOT BE A CANDIDATE.

12. No Revising Officer for any electoral district while he is a revising officer, or for two years thereafter, shall

Revising officer not to be candidate for two years.

legal and equitable, in Indian lands is vested in the Crown : *Brown v. West*, 1 U. C. O. S. 287. A grant under the seal at arms of the Governor of Quebec in 1784, to the Mohawk Indians, and such others of the Six Nations as wished to settle on the property, to be enjoyed by them and their posterity forever, conveys no legal estate, not being under the great seal, and not being to grantees capable of holding : *Doe dem. Sheldon v. Ramsay*, 9 U. C. Q. B. 105. The testimony of one witness deposing, to the best of his belief only, that certain lands were appropriated to the residence of Indian tribes, and had not been ceded to the Crown, is sufficient *prima facie* evidence of these facts : *Reg. v. Strong*, 1 Gr. 392. In regard to the reserve, the members of the tribe enjoy practically all the advantages and safeguards of tenants-in-common, but without a personal right of action respecting the lands occupied by them : *Bastien v. Hoffman*, 17 L. C. R. 233. The reserves are held and occupied in common by the tribes as general property : *Queen v. St. Catharines Lumber Co.*, 10 Ont. R. 196.

(e) By 48 Vic. c. 28, s. 17 (D.), it is provided that no Indian shall be deemed to be lawfully in possession of any land in a reserve, unless he has been, or is, located for the same by the band, or council of the band, with the approval of the Superintendent-General. And by s. 18, such approval is to be evidenced by a location ticket issued in triplicate. A lease signed by the chief of an Indian tribe, assuming to act as the agent of the tribe, conveys nothing : *Doe dem. Sheldon v. Ramsay*, 9 U. C. Q. B. 105. The meaning of the statutes is that no one shall attempt to bargain with the Indians respecting their lands ; the proposal must first be made to the Crown : *Regina v. Baby*, 12 U. C. Q. B. 346. There is no qualifying period of possession, or occupation, or residence, prescribed for this class of voters, as in the cases of tenants (pp. 70 and 83) ; occupants (pp. 73 and 84) ; income voters (pp. 78 and 85) ; owner's sons (pp. 79 and 87) ; or farmers' sons (p. 85), *ante*.

(f) These qualifications are : being (1) of full age, (2) a subject of the Crown, and (3) not otherwise disqualified or prevented from voting. See pp. 54-64 and p. 82, *ante*.

be qualified to be a candidate in any electoral district for which, or for any part of which, he has been such revising officer.

REGISTRATION OF VOTERS.

Appoint-
ment of Re-
vising
Officers.

Tenure of
office.

Their duties:
To prepare
and revise
lists of
voters.

Oath of
office.

Form A.

13. The Governor-General in Council may, within three months after the coming into force of this Act, and from time to time thereafter, when the office is vacant, appoint a proper person to be called "the Revising Officer," for each or any of the electoral districts of Canada, who shall hold office during good behaviour, but who shall be removable on address by the House of Commons, (g) and whose duties shall be to prepare, revise and complete, in the manner hereinafter provided, the lists of persons entitled to vote under the provisions of this Act in such electoral district; and every such officer shall, before entering upon his duties, take an oath of office (h) before any Judge of a Superior Court or Court of Record of the Province in which he is to act, in the Form A contained in the schedule to this Act,

(g) When a statute expressly declares that the appointment shall be during good behaviour, the grant of it during pleasure is void, and confers no office: *Hammond v. McLay*, 28 U. C. Q. B. 463. See also *Weir v. Mathieson*, 3 E. & A. 123. An appointment *quam diu se bene gesserit*, continues as long as the holder of the office behaves himself properly, is guilty of no misconduct, and is under no incapacity: *Per* Sir G. Bowyer, M. P., 180 Hans. Debs. (3rd ser.) 295. It is the Prerogative of the Crown, by letters patent, to suspend a public officer, though the office is granted for life; and after suspension he is not to exercise the functions of the office: *Slingsby's Case*, 3 Swans. 178. Suspension does not create a vacancy in the office: *Phillips v. Bury*, 2 T. R. 351. Special bodies empowered to try complaints against persons are bound to act according to the ordinary principles of justice, and are not to convict a man of a grave offence, which would warrant his expulsion, without fair, adequate and sufficient notice, and an opportunity of meeting the accusations brought against him: *Fisher v. Keane*, 11 Ch. D. 353.

(h) It is not upon appointment, but upon taking the required oaths, that an office becomes full *de facto*: *Rex v. Snyer*, 10 B. & C. 486. A refusal to take the oaths of office is equivalent to a refusal of the office: *Rex v. Larwood*, Carth. 306. A successor, although duly appointed, cannot act until he is sworn into office: *Prowse v. Foot*, 2 Bro. P. C. 289.

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which he shall forthwith thereafter cause to be filed with the Clerk of the Crown in Chancery at Ottawa; and in the event of the death, resignation, removal, inability or refusal to act of any such Revising Officer, another may, in the same way, be appointed in his stead, who shall hold office under the same tenure, and with the same duties and powers.

14. A Revising Officer to be appointed under this Act shall, in any Province, except Quebec and British Columbia, be either a Judge or a Junior Judge of some county or district court in the Province in which he is to act, or a barrister of at least five years' standing at the bar of such Province; (i) in the Province of Quebec he shall be either a Judge of the Superior Court for Lower Canada, or an advocate, or notary of that Province of at least five years' standing, and in the Province of British Columbia he shall be either a Judge of a superior court or of a county or district court, or a barrister of at least five years' standing, or a Stipendiary Magistrate: Provided always, that the same Revising Officer may be appointed for, and be required to discharge the said duties in respect of more than one electoral district, and may be appointed for a portion of any electoral district.

15. The Revising Officer who prepares the first list of voters for any electoral district, or any portion thereof, under this Act, shall, as soon as possible after taking the oath of office, obtain a certified copy or certified copies, as

(i) The Revising Barrister under the Imperial Registration Acts must be a barrister of not less than seven years' standing; and he must not be a member of Parliament, nor hold any office or place of profit under the Crown, except that of Recorder; but no barrister is to be appointed to revise the voters' lists of a borough of which he is Recorder. He is ineligible, in England for eighteen months, and in Ireland for seven years, after ceasing to be such Revising Barrister, to be elected for the constituency for which he held such office. The appointments of Revising Officers for the various electoral districts in Canada were gazetted in the *Canada Gazette* of the 31st October, 1885.

To procure
assessment
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the case may be, of the last revised or final assessment roll or rolls, (j) if any there be, in the electoral district, or part of a district, for which he is appointed, and also a certified copy or certified copies of the last revised list or lists or voters, (k) in such electoral district or part of a

(j) The assessment roll, when finally revised and corrected, is the foundation of all proceedings affecting Provincial and Municipal Elections and Municipal taxation, and other matters affecting Municipal proceedings and jurisdiction; and it is by this Act *prima facie* evidence of the value of the property mentioned in it. (See pp. 50, 72, and 84 *ante*, and p. *post*). All copies and lists ought to correspond with it, for it is the primary roll: *Per* A. Wilson, J., in *Laughtenborough v. McLean*, 14 U. C. C. P. 180. By R. S. O. c. 180, s. 57, the assessment roll as finally passed by the Court of Revision, and certified by the clerk as passed, shall, except in so far as the same may be further amended on appeal to the Judge of the County Court, be valid, and bind all parties concerned, notwithstanding any defect or error or mis-statement in the notice required by s. 41 of the Act, or the omission to deliver or transmit such notice. And by s. 65 the decision of the Judge or acting Judge is final and conclusive in every case adjudicated. See further *Harrison's Municipal Manual*, (4th ed.) 666 and 676. The valuation roll is an authentic document, which makes complete proof of the real and annual value of the taxable property of a municipality for election purposes: *Gratton v. St. Scholastique*, 7 Rev. L. 356. The valuation roll of the municipality is conclusive as to the value of the property: *Re Kamouraska Electoral Lists*, 3 Q. L. R. 308. No person can be placed on the electoral list who is not on the valuation roll: *Id.* All those on the valuation roll should appear on the electoral list, unless some disqualification of a personal nature prevents them from being registered as voters: *Ibid.*

(k) By R. S. O. c. 9, s. 8, the voters' lists for Provincial elections are subject to the revision of the County Judge; and upon such revision the assessment roll (notwithstanding the provisions referred to in note (j) *ante*), "shall not be conclusive evidence in regard to any particular, whether the matter, on which the right to vote depends, had or had not been brought before the Court of Revision, or had or had not been determined by that Court." But the decision of the Judge under the Act in regard to the right of any person to vote, is to be final so far as regards such person. "An adjudication that the persons named on the list are entitled to vote, is not within the jurisdiction of the County Judge. He is to revise the list by adding the names omitted, correcting those wrongly stated, or striking out those improperly there: because those omitted have assessable property, or assessed income; or because those inserted have it to a greater or smaller amount than stated, or have none. He adjudicates as to their property, or income, and, in respect of that, he corrects the list. The right to vote is the legal consequence only, and not the subject, of the adjudication:" *Per* Patterson, J. A., in *Lincoln*

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district, prepared and revised under the statutes of the Province relating to assessments and voters' lists respectively, for elections to the Provincial Legislature and, where there are no such lists, a certified copy or certified copies of the poll book or books at the last election in each electoral district; (l) and he shall proceed, as speedily as possible, (m) with the aid thereof and of such other information as he can obtain, to ascertain and prepare a separ-

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(*Borrowman's Case*) 2 App. R. 320. The effect of the Voters' List Finality Act, 41 Vic. c. 21, O., is to render the voters' lists final and conclusive of the right of all persons named therein to vote at Provincial elections, except where there had been a subsequent change of position, or status, by the voter having parted with the interest which he had, or, by the assessment roll, appeared to have, in the property: *South Wentworth*, Ho. E. C. 531. The electoral list is a document of the highest importance, for upon its validity may depend the legality of the election. No element of uncertainty should be allowed to find its way into the proceedings affecting it; and it is the duty of the Court to insist upon a strict adherence to the directions of the legislature regarding it: *Marcotte v. Paquin*, 5 Q. L. R. 168. The Quebec Election Act requires the duplicate list of voters to be transmitted to the Registrar within eight days after the day upon which such list shall have come into force. Where the officer transmitted the list four days before it came into force: *Held*, that this was not a compliance with the law and the officer was subject to a penalty: *Ibid*. Alterations made in an electoral list after the expiration of the time limited for such alterations, are illegal and will be set aside: *Jodin v. Varennes*, 2 Leg. N. 262. When a corporation has decided upon a complaint in respect of the electoral lists, where such complaint had not been filed within the time fixed by law, an appeal will lie to a Judge from such decision: *Ex parte Coté*, 4 Q. L. R. 98. See further notes on pp. 116-118.

(l) The poll books here referred to are those used at the last Dominion election in such electoral district.

(m) The duty of the Revising Officer under this section is imperative: "he shall proceed as speedily as possible," &c. The word "shall" is imperative by 31 Vic. c. 1, s. 8, subs. 3 (D.) The above words have very much the same effect as "forthwith" or "immediately." Such words always receive a reasonable construction; and should be construed to mean as soon as the act can reasonably be done: *Reg. v. Robinson*, 4 P. & D. 391. When no time is expressly mentioned for the performance of the act, the law considers it shall take place within a reasonable time: *Greaves v. Ashlin*, 3 Camp. 426. A question of reasonable time for the performance of an act is a question of fact, and not of law: *Startup v. Macdonald*, 2 M. & Gr. 395. In so far as the officer, whose duty it is to do the acts within a limited time is concerned, the Act may be construed as imperative: *Hunt v. Hibbs*, 5 H. & N. 123.

Form and
contents of
lists.

Form B

ate list for each municipality within his appointment, and wherever there is not a municipality, or where the electoral district is a municipality, a separate list for each township, parish, polling district or other known division of the electoral district, (n) of the persons who, according to the provisions of this Act, are entitled to be registered as voters, and to vote under this Act, at any election for such electoral district;—which list shall contain the names of such persons in alphabetical order, (o) and shall be in the form B contained in the schedule to this Act, indicating

But as far as the public interests are concerned, the Act may be looked upon as directory: *Nickle v. Douglas*, 35 U. C. Q. B. 126. "The general rule is that an absolute enactment must be obeyed or fulfilled exactly; but it is sufficient if a directory enactment be obeyed or fulfilled substantially." *Per Lord Coleridge, C. J., in Woodward v. Sarsons*, L. R. 10 C. P. 746.

(n) The duty of the Revising Officer in preparing the "separate lists" here referred to, is ministerial, not judicial; and is similar to the duties of Overseers under the Imperial Acts, or Municipal Officers under the Provincial Franchise Acts. The apparent intention of the above provision, as to the municipal and other divisions, is to leave it discretionary with the Revising Officer to make out the preparatory lists according to the municipal, or parish, divisions; or according to the polling-district, or other known, divisions of the electoral district for Dominion election purposes.

(o) The object of the Voters' List is to furnish an official alphabetical register of all persons who are possessed of the requisite qualifications of voters. It is to enable all persons interested in the election to have a check at hand at the time of polling the votes: *Reg. ex rel. Dundas v. Niles*, 1 U. C. Cham. 198. And so that the voter may be easily identified when he tenders his vote at the polls: *Lincoln (Berston's Case)*, 2 App. R. 324. By s. 10 ante, no persons are to be entitled to vote at Dominion elections except the persons duly qualified and registered as voters under this Act. The list made out ought to be alphabetical: *Hunt v. Hibbs*, 5 H. & N. 123. The primary object of instituting lists was to secure greater efficiency and convenience in conducting the elections, by making the list the sole record and table of reference on election day. To this end it was absolutely essential that the alphabetical list should contain the name of every person entitled to vote. It was expedient, but not essential, that it should comprise a description of his real property for the purpose of identification, which was the only question of qualification which could be raised at the election: *Per Moss, C. J., in Lincoln (Berston's Case)*, 2 App. R. 334. The Registration Act, 6 Vic. c. 18 (Imp.) provides (s. 79) that no misnomer or inaccurate description of any person, place or thing in any list of voters, &c., shall prevent or abridge the

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operation of the Act, provided such person, place or thing be so denominated as to be commonly understood. The words "commonly understood," imply some clumsy description, which though inaccurate, sufficiently points to the thing described: *Flounders v. Donner*, 2 C. B. 63. There is no analogous provision in this Act; but the spirit of modern judicial decisions is in harmony with its expressed intention. Misnomers are questions of fact, as to whether a person, place or thing is so denominated as to be commonly understood: *Hinton v. Hinton*, 7 M. & Gr. 163. W. Nicholas was entered on the list as W. Nickless, an error in spelling: *Held*, sufficient: *Ibid*. The Christian name James was inserted instead of Joseph: *Held*, a misnomer cured by the Act: *Reg. v. Thwaites*, 1 E. & B. 704. Nathl. Beggs, sufficiently identifies Nathaniel Beggs: *Carroll v. Beggs*, 15 Ir. C. L. 370. Thomas Brown, finding that he had been entered by mistake as William, voted under the latter name: *Held*, a misnomer, and vote good: *Oldham (Brown's Case)*, 1 O'M & H. 152. One Charles Arthur Bowman, was generally known and identified as Charles Bowman, and so entered on the list; *Held*, a misnomer not cured by the Act: *Moorehouse v. Linney*, 15 Q. B. D. 273. The abbreviations, Frank for Francis, Fred for Frederick, Harry for Henry, Joe for Joseph, would be covered by the provision, because everybody of ordinary sense would understand what was meant: *Per Lopes, J.*, *Ibid* 279. Wm. is an abbreviation for William: *Henry v. Armitage*, 12 Q. B. D. 257. Jone for Jones, "obviously a mere clerical error, *ex facie*:" *Gothard v. Clarke*, 5 C. P. D. 253. Where the surnames of the voters were correct, but the Christian names were erroneous: *Held*, votes good: *Reg. ex rel. Chambers v. Allison*, 1 Can. L. J. 244. Wilson Wilson for William Wilson, Simond Faulkner for Alexander Faulkner, were allowed; and Thomas Sanderson was held *idem sonans* with Thomas Anderson: *Ibid*. See contra, *Phayre v. McDonel*: 1 Ir. L. R. 460.

(p) Under a similar provision in the Ontario Election Law 1868, where no other description of the voter's real property was given but the name of the street on which he resided, it was held that the right of a voter, whose name has been entered on the voters' list, to exercise the elective franchise is not destroyed by the want of a sufficient, or of any, description of the real property on which his qualification depends. The provision in the Ontario Election Acts requiring such description to be inserted, is directory only, and does not make it essential to the right to vote. The description must be accepted to be sufficient where it is the same as that given in the Assessment Roll:

nearly as can be ascertained by the said Officer (q)), or as

Lincoln (Berston's Case) 2 App. R. 324. It is a question of fact for the revising barrister whether the nature or description of the qualification is sufficiently described for the purpose of being identified : *Wood v. Willesden*, 2 C. B. 15. The place of abode of a voter is no part of his qualification : *Luckett v. Knowles*, 10 Jur. 99. A voter's place of abode was described as Greenwich, whereas his true place of abode was Queen's Square, Bloomsbury : *Held*, an inaccurate description which the Revising Barrister had power to correct : *Ibid*. The voter was described as of "The Grove, Neasdon." It was shewn that "Neasdon" was not a street, lane, or like place, and that the property was not situate in any street, lane, or like place, but was known by the above name : *Held*, a sufficient description : *Ibid*. So "Poplar Grove, Didsbury," without stating where Didsbury was situated : *Gadsby v. Warburton*, 7 M. & Gr. 11. The object is to give reasonable information where the party is to be found : *Ibid*. The property was described as "building and land, Rushbrooke," without saying where Rushbrooke was. It was argued that "it was not even stated to be in England;" to which Maule, J., replied : "It is not even stated to be in Europe;" but the objection was overruled : *Nunn v. Denton*, 7 M. & Gr. 66. So "House and shop, High street" is sufficient : *Daniel v. Camplin*, 7 M. & Gr. 167. "Part of a house" is a good description of the nature of the qualification : *Judson v. Luckett*, 2 C. B. 197. The property occupied by the voter consisted of a farm-house and some land at some distance from the farm in the same township. The farm was known by no particular name, but the whole property was entered opposite the voter's name as "Brock lane and elsewhere in Thornton." *Held*, sufficient : *Birks v. Allison*, (*Dixon's Case*), 13 C. B. N. S. 24. Ambiguity in the description of the qualification as "Leasehold, house and garden," will not invalidate : *Jones v. Jones*, L. R. 4 C. P. 422. If a person be duly assessed for a named property on the roll, even although there may be a clerical error in describing the property on the voters' list, or in erroneously setting down another property on the voters' list, if no question or difficulty arise at the poll as to taking the oath, the vote will not be struck off : *Brockville*, 7 Can. L. J. 221. The provisions of the law as to how voters are to be entered on the voters' list in respect to their property is directory : *Prescott*, Ho. E. C. 780. Mistakes in copying the voters' lists should not deprive legally qualified voters of their votes. But the mere fact that the lists were not correct alphabetical lists, or had not the correct number of the lot, or were not properly certified, or the omitting to do some act as to which the statute is directory, is no ground for setting aside an election, unless some injustice has resulted from the omission, or unless the result of the election was affected by the mistake : *North Victoria*, Ho. E. C. 584.

(q) The object of requiring the post office address of each voter is to enable objectors to serve notices by post as authorised by the latter part of ss. 19 and 26 *post*. Where the municipal officers, finding an incorrect address of a voter in the copy of the register of voters sent to them by the clerk of the

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farmers' sons or the sons of owners of real property other than farmers, stating the numbers of the lots, portions of lots, concessions, or streets or other available description of the real property of their fathers or mothers, in respect of which they are qualified as farmers' or other owners' sons, as hereinbefore provided, (r) or whether they are qualified in respect of income; and as to sons of farmers or of other owners as aforesaid, and voters on income, stating also in the said list, in the proper columns thereof, the residences and post office addresses of such persons, as nearly as can be ascertained by him; (s) and after having so prepared the said list, the Revising Officer shall sign the same as such: (t) Provided, that such assessment rolls as aforesaid shall be taken by the Revising Officer as *prima facie* evidence of value, and such voters' lists or poll books as

Farmers' sons and voters on income.

Signing lists.

Assessment rolls, and voters' lists *prima facie*

peace, altered it by substituting the true address of the voter, and so published it: *Held*, that a notice of objection directed and sent by post addressed to such voter at such substituted address was not a compliance with the Act, and that the service of the notice was insufficient: *Noseworthy v. Buckland-in-the-Moor*, L. R. 9, C. P. 233. See notes (y) p. 121, and (n) p. 129 post.

(r) See note (p) p. 117, *ante*.

(s) See note (q) *ante*.

(t) Under a similar direction to overseers requiring them to sign and publish the lists of voters it was held that the provision directing them to sign the lists was not obligatory, but directory, and that lists unsigned, or signed by one only, or by a minority, of the overseers, were not invalid: *Morgan v. Parry*, 17 C. B. 334. Where a municipal clerk died after preparing the lists, and his successor finding them in the office with the certificate and name of the former clerk printed thereon, posted them as required by the Act: *Held*, that the provision as to signing the lists was directory, and that the object of having the clerk's name to the list was to authenticate the same as coming from the clerk's office: *Re Goderich Voters' Lists*, 6 Ont. Pr. R. 213. Where a Burgess list was not signed by some of the proper officers, but a list of certain claimants, properly prepared, was tendered for revision, and refused: *Held*, on an application for a mandamus, that as there was no subsisting list, the effect of revising the list of the claimants would be to make them the sole constituency: *Reg. v. Harwich*, 16 Jur. 291. Where the overseers of one of several parishes omitted to make out a list; and at the revision court there was no list for the parish in which the name of the claimant appeared, a mandamus was granted: *Reg. v. Lichfield*, 1 Q. B. 453.

evidence of qualification aforesaid, as the case may be, as *prima facie* evidence of qualification to vote. (*u*)

Publication of lists.

Form C.

By posting in offices; and mailing to certain officials.

16. The Revising Officer shall then forthwith cause to be printed a sufficient number of copies of the said lists, being not less than two hundred, (*v*, and, after certifying them in the form C contained in the schedule hereto, shall, on or before the first day of March, one thousand eight hundred and eighty-six, publish the said lists, (*w*) by causing one copy of each list to be posted up in the office of the clerk or other corresponding officer of each municipal, parochial or other known territorial division in the electoral district, for which the said list is prepared and

(*u*) See notes pp. 48-50, 72 and 84.

(*v*) A similar provision is in R. S. O. c. 9, s. 3. The duty here prescribed is ministerial, not judicial. The overseers of a parish, in preparing the list for publication, placed the name of a voter under the proper heading; but the printer by mistake, inserted on the sheet which commenced with the voter's name, a heading applicable to another list, and the overseers published the list as erroneously printed. The Revising Barrister decided that there had not been a publication of the proper list, and expunged the name of the voter, and all the names following under the erroneous heading: *Held*, reversing the decision of the Revising Barrister, that there had been a sufficient publication of the list, and that if there was anything wrong in it, it was a mistake of the printer which the Revising Barrister was bound to correct: *Mather v. Allandale*, L. R. 6 C. P. 272. "The objection taken by the Revising Barrister was over-refined": *Per Willes, J., Ibid.* Twelve persons, whose names were entered on the assessment roll as "freeholders," appeared on the voters' lists, owing to a printer's mistake, as "farmers' sons," and voted at an election: *Held*, that having been rightly entered on the assessment roll, and having the right to vote, the mistake as to the description of their qualification on the voters' list did not disfranchise them: *Prescott*, Ho. E. C. 780. "It would be a hardship indeed if a person should find himself disfranchised by a mere mistake on the voters' list, caused either by accident, clerical error, or an error of the printer:" *Per Armour, J., Ibid.*

(*w*) By the Imperial Act (6 Vic. c. 18. s. 26), it is provided that the lists are not to be invalidated by insufficient publication, provided they have been affixed in any place, and for any portion of the time required. No similar clause is in this Act. In case any list, notice, &c., should be destroyed, mutilated, effaced, or removed, before the expiration of the period during which it ought to continue, it should be renewed as soon as conveniently may be, by affixing another in its place: *Rogers on Elections*, 130.

to which it relates, (x) and by mailing to the member or members of the House of Commons, and to the unsuccessful candidate at the then last election for such electoral district, to the sheriff, warden, mayor, aldermen or councillors, clerk of the peace, and treasurer, clerk or officers corresponding thereto, under whatever official name they are known, of any county, city, town or part of a city, included in such electoral district, and to the reeve, councillors, mayor, clerk, parish court commissioner and treasurer, or officers corresponding thereto as aforesaid, of each township, parish or village municipality in such electoral district, two copies each, addressed to the post office addresses of such persons respectively; (y) and the copy of every such list so posted up shall be open to inspection by any person, free of charge, in the office where it is deposited, during the business hours of such office, (z) until the day fixed, as hereinafter provided, for the preliminary revision of the said list; and copies of the list may be procured by any person on application to the Revising Officer, as soon as he can furnish them, on paying therefor a price proportionately sufficient to cover the price paid for printing the same, but not to exceed fifty cents for a copy of the list of voters for any electoral dis-

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(x) The posting of the lists in the public office of the clerk of the local municipality, is intended to give notice to the electors and all other parties interested, that the lists are posted; so that objections may be made against the names of the persons entered thereon, and that claims may be made by persons wrongfully omitted therefrom within the time limited by the Revising Officer's notice.

(y) The post office is, for the purposes of the Act, the agent of the sender, and it is sufficient to prove that it was posted in time and in the ordinary way of sending letters by post: *Smith v. Huggett*, 11 C. B. N. S. 55. See note (n) p. 129 post.

(z) The provision in the Imperial Act of 1843 is that the overseers shall keep a copy of the list of claimants and of the register of voters, to be perused by any person, without payment of fee, at any time between the hours of ten o'clock in the forenoon, and four o'clock in the afternoon of any day except Sunday.

If no municipal divisions in the electoral district.

Posting and mailing copies.

Copies to be mailed to post-masters and others to be posted up.

trict. (a) In the event of there being no municipal divisions in the electoral district, a copy or copies of the said list, certified as aforesaid, shall be posted up in one or more of what the Revising Officer considers the most public place or places in each township, parish, polling district or other known division of the electoral district; (b) and two copies each shall be mailed to officers or persons in such electoral district corresponding, as nearly as may be, to those particularly mentioned in this section with respect to municipalities.

17. Two copies of that part of the list relating to such municipality, or parochial or other known division as aforesaid, certified as aforesaid, shall also be mailed at the time of the publication thereof as aforesaid, to each of the postmasters in the said known division; and each of the said postmasters, and every sheriff, warden, clerk of the peace and treasurer, parish court commissioner or other officer to whom two copies each of the said lists are to be mailed under this Act, shall forthwith after receiving them post up one of them in a conspicuous place in his office, where the said list shall remain until the day fixed, as hereinafter provided, for the preliminary revision thereof, and shall be open to inspection by any one during the office hours of the office; (c) and to each of the copies of

(a) The price under the Registration Acts (Imp.) to be paid by persons applying for copies of the register of voters is, containing less than 1,000 names, 1s.; between 1,000 and 3,000 names, 2s. 6d.; between 3,000 and 6000 names, 5s.; between 6000 and 9000 names, 7s. 6d.; over 9000 names, 10s.

(b) The Imperial Act (6 Vic. c. 18) requires the overseers to publish the lists by affixing them to some public situation at or near the outer door of every church or chapel and town hall, or some public and conspicuous situation. They are not directed to send them to any representative, or official, persons.

(c) Though nearly all the officers above named hold their offices by virtue of Provincial legislation, yet, as subjects of the Dominion, the above direction is obligatory on them. For the purposes of this Act they are constituted Dominion officers, and the duty here imposed may be enforced by process of law. The Dominion and Provincial Legislatures can in matters

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the lists so made or published under this and the next preceding section, shall be appended a notice in the form D in the schedule to this Act. (d)

With notice of time for preliminary revision.

18. Notice that the said list and the time of holding the sitting mentioned in the notice appended thereto have been published in manner aforesaid, shall also be given by the Revising Officer forthwith after such publication, by at least one insertion thereof, in the form D in the schedule to this Act, in one or more newspapers, if any, published within the electoral district; and in case no newspaper is published therein, then in one or more newspapers published in a neighboring electoral district or districts. (e)

Notice of such sitting: how given.

Form D.

19. The Revising Officer shall hold a sitting, as mentioned in the said notice, for the preliminary revision of the lists at such place in the electoral district, (f) or in such

Sitting for preliminary revision.

within their respective spheres impose duties on any subject of the Dominion, whether they be Judges or officers of Provincial Courts: *Bruneau v. Massue*, 23 L. C. J. 60. See further s. 63 *post*.

(d) This notice (form D), announcing the day on which the Revising Officer is to publicly proceed to the preliminary revision of the list, and fixing the last day for delivering objections, is also to be published by at least one insertion in one or more newspapers. By the Interpretation Act, 31 Vic. c. 1, s. 7, sub-s. 31 (D), it is provided that "where forms are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead, shall not vitiate them." Where the forms in the schedule are repugnant to the statute, the statute governs: *Re Baines*, 1 Cr. & Ph. 46.

(e) The length of time the required notice is to be published is not prescribed. But reading s. 19, in connection with the direction contained in ss. 16 and 17, as to the publication of the lists, the notice of the sitting of the Court, must be "not less than four weeks after the publication of the list;" or such further time as may be reasonable in view of the public call made on "any person objecting to any name;" and on "any person desiring to add any name" to deliver notice of the same in writing to the Revising Officer, and the persons objected to, "at least one week before the day fixed for the preliminary revision."

(f) The sitting for the "Preliminary Revision" of the lists is to be held in the most convenient place "in the Electoral District," not in each municipality or other minor division, as prescribed for the "Final Revision" by s. 26.

portion as may be within his commission, as he shall deem most convenient for that purpose, on a day not less than four weeks after the publication of the list as aforesaid; and any person (g) desiring to add any names to the said

(g) "Any person." This form of expression is large enough to include electors and non-electors. But as the statute gives franchise rights to particular—not all—classes of persons, it would seem reasonable to construe this expression as meaning only those who have an interest in the subject matter, i. e., persons entitled to claim the right of suffrage. "All rights reside in persons, and are rights to acts or forbearances on the part of other persons. They are capable of being enforced judicially against the persons who are bound to those acts or forbearances." *Austin's Jurisprudence*, 378. "I have no right, independently of the injunction or prohibition which declares that some given act, forbearance, or omission would be a violation of my right; nor would the act or forbearance be a violation of my right, unless my right, and the corresponding duty were clothed, with a sanction, criminal or civil." *Ibid.*, 794. "*Jus personale*, commonly signifies rights which obtain against persons *certain*." *Ibid.*, 973. No one can sue except for the infringement of a common law right; and every person can sue who has suffered an infringement of a common law right." *Dicey on Parties to Actions*, 73. It is essential to an action of tort that the act complained of should be legally wrongful as regards the party complaining, i. e., it must prejudicially affect him in some legal right. The fact that it will, however, do him harm in his interests, is not enough: *Rogers v. Rajendro Dutt*, 13 Moore P.C. 209, s. c. 9 W. R. 149. Whenever one man does an act which would operate in derogation of the rights of another, he is liable to an action without particular damage at the suit of the person whose right may be affected: *Harrop v. Hirst*, L. R. 4 Ex. 43. On an action brought by a person on the register against a Returning Officer who on a scrutiny found him not entitled to vote: *Held*, that having lost his right to vote he had no right of action: *Pryce v. Belchers*, 4 C. B. 867. "Person" may, in a public statute include a corporation, as well as a natural person: *Pharmaceutical Society v. London, &c., Supply Association*, 5 App. Cas. 857. When a statute provides that a "person" shall do a particular act, it is *prima facie*, natural and reasonable to understand the Legislature as intending such persons, as by the use of proper means, may be able to fulfill the condition; and not those who, called "persons" in law, have no capacity to do so at any time, by any means, or under any circumstances: *Ibid.* "Whenever you see that the object of the Act requires that the word 'person' shall have the more extended, or the less extended, sense, then, whichever sense it requires, you should apply the words in that sense, and construe the Act accordingly." *Per Lord Blackburn, Ibid.*, 869. The Ontario Voters' List Act (R. S. O. c. 9, s. 8), provides that "any voter, or person entitled to be a voter" may apply to the County Judge respecting the revision of voters' lists for Provincial elections. And under that Act it was *Held*, that it was competent for the Judge to enquire into the qualification of the appellant and that the entry of the

list or desiring otherwise to amend the same, (h) shall, at least one week before the day fixed for such preliminary revision, (i) (and in the case of a person desiring to object

Amendments and objections to be notified to

name on the voter's list was not conclusive: *Re Parsons and Toms and the Voters' Lis: of Goderich*, 36 U. C. Q. B. 88. It is sufficient if the notice is given, while the objector is duly qualified to give it, and within the period allowed for giving notices: *Jones v. Jones*, L. R. 1 C. P. 140. See further, note (k) to s. 26 and note (g) to s. 44, *post*.

(h) Under the Imperial Act of 1843 (s. 40), which provided that where the name of a person on the list had been objected to and the person objecting appeared in support of the objection, the Revising Barrister should require the person objected to to prove his qualification, it was held that an objector could not withdraw. One P, after giving the required notices of objection, published in the papers that the objections were withdrawn, as having been signed by him under false representations. Before the holding of the Revision Court he sent another notice to each objectee that the objections were not withdrawn, and that it would be necessary for him to attend and answer the objections. At the Revision Court the notice were duly proved, but on proof of the published notices of withdrawal, the Revising Barrister held that the objections had been withdrawn: *Held*, that the Revising Barrister was wrong, and that the objector could not withdraw the notices: *Proudfoot v. Barnes*, L. R. 2 C. P. 88. "The right of voting and of objecting are matters in which the interests of the public are greatly concerned. The objector and the person objected to certainly stand in some respects in the position of litigant parties, but I think it would be to the last degree dangerous to the interests of the public to allow the objection to be withdrawn at the pleasure of the objector": *Per Erle, C. J., Ibid.* "When the person who gave the notice assumed the office of objector he placed himself in the position of a public officer, and cannot of his own mere will divest himself of it. He gives a notice of objection, and waits until it is too late for any other person to object, and then gives notice that he withdraws the objection. It would be opening the door to fraud to allow this device to prevail:" *Per Byles, J., Ibid.* The Imperial Act of 1878 now gives a right to withdraw. See notes (k) and (l) to s. 26, *post*.

(i) The general rule for the computation of time fixed by statute is, unless there is something in the statute to the contrary, to hold the first day excluded and the last day included, as "within twenty days of the execution:" *Ex parte Fallon*, 5 T. R. 283. "Within twenty-one days after execution:" *Williams v. Burgess*, 12 A. & E. 635, s. c., 9 Dowl. P. C. 544. "Within sixteen days after the service hereof:" *Scott v. Dickson*, 1 U. C. Pr. R. 366; *Vrooman v. Shuert*, 2 U. C. Pr. R. 122. When a statute directs that a claim shall be made within a certain specified time, this right will be forfeited by an omission to assert the right within the given time: *Doe dem. Watson v. Jefferson*, 2 Bing. 118. "The laws assist those who are vigilant, not those

Revising
Officer.

to any name, at any time before the day so fixed, (j)) deposited with or mail to the Revising Officer, by registered letter.

who sleep over their rights,' is one of the maxims which we learn on our earliest attendance in Westminster Hall :'' *Per* Heath, J., in *Cox v. Morgan*, 2 B. & P. 412. It applies in Courts of Equity as well as in Courts of Law : *Per* Lord Cranworth, in *Leather Cloth Company v. American Leather Cloth Company*, 11 H. L. Cas. 523. And the maxim is obviously applicable whenever a party debars himself of a legal right or remedy, by his own negligence or laches : *Camidge v. Allenby*, 6 B. & C. 373. The maxim also applies to a voter who has neglected to apply to correct a mistake in the overseer's list of persons qualified to vote : *Per* Coltman, J., in *Onions v. Bowdler*, 5 C. B. 74. When the Legislature has fixed the time, it would be preposterous for the Courts to countenance laches beyond the period that it had been confined by Act of Parliament : *Smith v. Clay*, 3 Bro. C. C. 636n. The complaint must be made within the time limited : *Reg. ex rel. Telfer v. Allan*, 1 U. C. Pr. R. 214; *Reg. ex rel. White v. Roach*, 18 U. C. Q. B. 226. Where the party has a certain number of days to do an act, and the last day for doing such act falls on a holiday, then such day is not excluded from the computation ; but if the party cannot do the act unless the offices are open, and the last day for doing it falls on a day upon which the offices are closed, by reason of its being a holiday there, then such day is not to be reckoned : *Wilkinson v. Britton*, 1 M. & Gr. 557. By s. 2, sub-s. 2, it is provided that where the time limited for any act expires or falls on a Sunday or public holiday, the act may be done on the day next following. See notes (x) and (y) pp. 52 and 53. Where the last day for giving the notice of appeals from the list of voters happened to be a Sunday, the notice may be given on that day ; the service is not void by statute nor by the common law : *Rawlins v. West Derby*, 2 C. B. 72. Notice of appeals in respect of registration of voters is not "process" of a judicial character : *Per* Tindal, C. J., *Ibid.* A notice posted so as to be received on a Sunday is well served : *Colwill v. Lewis*, 2 C. B. 60.

(j) The notice must, however, be served in such a way as to come to the knowledge of the person objected to before the objection to his vote can be heard. Where no time is expressly mentioned for the performance of an act, the law considers it shall take place within a reasonable time : *Ellis v. Thompson*, 3 M. & W. 445. See further, notes (m) and (n) to this section. The lateness of the hour of service on the proper day does not affect its validity. A notice served on a grown person at the residence of the proper officer at twenty minutes past eleven o'clock at night : *Held*, sufficient in law : *Points v. Attwood*, 6 C. B. 38. But where the Revising Barrister found as a fact that a notice left between nine and ten o'clock at night, inside the entrance door of the house, was not a reasonable notice, it was held insufficient service : *Watson v. Pitt*, 5 C. B. 77. Where the notice was placed under respondent's door a short time before twelve o'clock at night, but the witness did not hear the clock strike : *Held*, not sufficient proof of service of the notice : 1 *Stephens on Elections*, 754.

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ter, at his office or place of address, (k) a notice in the form E in the schedule to this Act; (l) and in the event of any ^{Form E.}

(k) The Imperial Act (6 Vic. c. 18, s. 100) provided that notices should be sent by post, and that a duplicate notice stamped by the post office should be evidence of a notice having been given: *Held*, that services made by leaving the notices at the officer's place of abode was good service, the section being entirely an enabling enactment, and not taking away any of the modes of service which were consistent with the law as it stood before the statute passed: *Hickton v. Antrobus*, 2 C. B. 82; *Smith v. Huggett*, 11 C. B. N. S. 55. When the service is not personal, it may be served at the officer's place of abode on some grown up person connected with his household: *Mittleberger v. Whitehead*, Rob. & Jos. Dig. 2901. Where a public officer receives and acts upon a notice it must be assumed, in the absence of evidence to the contrary, that he received it in proper time: *Godsell v. Innous*, 17 C. B. 295; s. c. *sub nom. Godsell v. Innons*, 1 Jur. N. S. 1112.

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(l) The Imperial Act of 1843 provides that "every notice of objection shall be signed by the person objecting;" and it was held, under that Act, that a notice signed by another person as agent or for the objector, though in observance of and by his directions, was invalid: *Toms v. Cuming*, 7 M. & Gr. 88. This Act does not contain the same direction, only in form D it states that the "notice must be signed by the person so giving notice," and in form E it indicates a place for the "name of complainant;" but by ss. 43 and 50 it is provided that "strict" or "technical" rules are not to be binding. See also note (d) p. 123. The notice of objection need not be signed by the objector on the day it bears date, but it is sufficient if it be signed by him on any day within the period he is by law qualified to object, and while he is qualified to give it. Therefore, a notice bearing date the 12th, but in fact signed on the 18th, August, was held good: *Jones v. Jones*, L. R. 1 C. P. 140. A notice with the date of the year left blank is bad: *Beenlen v. Hockin*, 4 C. B. 19. So a notice given in 1883, with the year written in words, but the last word "three" left out is bad, although such notice had been published by the overseers, and the Revising Barrister found that the claimant was not misled: *Freeman v. Newman*, 12 Q. B. D. 373. Although the claimant ought to write his signature himself, nevertheless if written by the hand of another person, and such notice is acted upon, no third person can object to it on the ground of its not being properly signed: *Davies v. Hopkins*, 3 C. B. N. S. 376. It is sufficient if signed with the name of the claimant in the handwriting of another person by the authority of such claimant: *McNiffe v. McTiernan*, 3 Ir. Com. Law N. S. 187. If the signature is "wholly illegible so that an ordinary person, unacquainted with the signature, could not, by perusing it with ordinary diligence and skill, arrive at any reasonable conclusion what the signature was intended to designate," but if guided to the entry in the register by the objector's place of abode, he might, by comparing the notice with the entry, have inferred the identity: *Held*, reversing the Revising Barrister, that the notice was sufficient, on the ground that if the object of the statute was to authenticate the document, the signature was sufficient; and if the object was to inform

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Notice to person on the insertion (if whose name is objected to.) such objection being that a name already on the list should be struck off, the person so objecting shall give notice in writing to the person whose name is objected to within the same time (*m*) and in the like form as to the Revising Officer, by delivering such notice to such person, or by

the opposite party, the Revising Barrister had not found that it did not so notify : *Trotter v. Walker*, (*Hallam's Case*), 32 L. J. C. P. 60. Where the notice of objection was signed in such a way that the Christian name was legible, but the surname was found not to be decipherable without recourse to the entry on the register of the objector's name, or other extraneous assistance : *Held*, that whether the object of the statute in requiring a signature was to authenticate the document, or to give information to the objectee and Revising Barrister, the signature was sufficient : *Trotter v. Walker*, L. R. 1 C. B. N. S. 30, s. c. 9 Jur. N. S. 603. The usual signature of the objector was engraved on a stamp, and this stamp was impressed on the notice of objections : *Held*, sufficient : *Bennett v. Brumfitt*, L. R. 3 C. P. 28. It is not necessary that a separate notice of objection should be given in respect of each voter objected to in the list ; all the names of the voters objected to may be included in a schedule to one notice : *Smith v. Holloway*, L. R. 1 C. P. 145. Where in the body of the notice, the objector, instead of using the pronoun "your," inserted his surname before his Christian name, but it was found to be "commonly understood," *Held*, sufficient : *Force v. Floud*, 15 C. B. N. S. 543. A voter sent in his claim signed by his initials and surname ; it was rejected because of the signature by initials : *Held*, that the information was sufficient, and that a mandamus should issue to have the name inserted on the list : *Reg. v. Hartlepool*, 15 Jur. 1158. *Quere*, whether the notice of claim requires the personal signatures of the claimant : *Davies v. Hopkins*, 3 C. B. N. S. 376. The notice should be subscribed by the objector or his agent : *Re Simpson and the Judge of Lanark*, 9 Ont. Pr. R. 358. Technical objections as to matters of form before a County Judge on the revision of the Voters' Lists ought not to prevail when no one can be misled or injured by the alleged errors : *Per Richards, C. J.*, in *Re McCulloch and the Judge of Leeds and Grenville*, 35 U. C. Q. B. 451. See note to form D.

(*m*) The words, "any time before the day so fixed" (s. 19) for the preliminary revision, leaves it to the Revising Officer to determine whether the notice could have reached the party objected to, in reasonable time. What is a "reasonable time" is a question of fact, and not of law : *Startup v. McDonald*, 6 M. & Gr. 593. "As a general rule no man's property or liberty even in a judicial proceeding, however large the power given to the Courts, can be brought in jeopardy, so that he may be said to be bound by it unless he has had the opportunity of being heard." *Per Richards, C. J.*, in *Nicholls v. Cumming*, 1 S. C. R. 408. When the initiatory proceedings necessary to give jurisdiction to a public authority, are not taken as prescribed by the Act, all proceedings founded thereon are void, and may be reversed on *certiorari* : *Robinson v. McQuaid*, 1 P. E. I. 103. See further, note (*j*) ante p. 126, and note (*n*) following.

mailing the same by registered letter to his last known post office address. (n)

20. On the day and at the time and place appointed, the Revising Officer shall publicly proceed to the preliminary revision of the lists, basing such revision on the evi-

Preliminary
revision.

(n) This is similar to the Imperial Act of 1843, s. 100. To dispense with proof of service there must be an actual appearance on the day the case is called on: *Grover v. Bontems*, 4 C. B. 70. If the party appears, he cannot be heard to object to the sufficiency of the notice of appeal: *Rawlins v. West Derby*, 2 C. B. 72. But his appearance, for the purpose of objecting to the want of service of the proper notice, is not a waiver: *Reg. v. Court of Revision of Cornwall*, 25 U. C. Q. B. 286. When the objector serves the notice through the post office, and the party addressed resides a distance from the office to which the notice is directed, he must shew that such notice would, in the ordinary course of post, be delivered in sufficient time: *Lewis v. Evans*, L. R. 10 C. P. 297. A notice was sent by post to the address of a voter; but there was no postal delivery of letters at the place, and unless by some private accidental conveyance, the voter would not receive the notice: *Held*, not sufficient service: *Ibid.* Where notices were duly posted on such a day as was sufficient for them to have reached their destination within the time required by the statute, but from some neglect in the post office they did not reach their destination until after that time: *Held*, that the services were sufficient: *Bayley v. Nantwich*, 2 C. B. 118. So although the notice was not delivered by the post office authorities: *Bishop v. Helps*, 2 C. B. 45. The statute enacts that it shall be "sufficient" if the notice shall be sent by the post free of postage, directed to the person to whom it is sent. When all these conditions are complied with, such a sending will be sufficient substitute for giving the notice to the person objected to, or leaving it at his place of abode: *Per Tindal, C. J., Ibid.* When a letter is deposited in the post office it ceases to be the property of the sender, and becomes the property of the person to whom it is addressed: 38 Vic. c. 7, s. 37 (D.) A person putting into the post a letter properly directed, has done all that is necessary for him to do, and is not answerable for casualties occurring in the post office: *Dunlop v. Higgins*, 1 H. L. Cas. 381; *Harris's Case*, L. R. 7 Ch. 587; *Johnston v. Provincial Insurance Company*, 27 U. C. C. P. 464; *Shannon v. Hastings Mutual Insurance Company*, 2 App. R. 81. *Sed Contra*: *British and American Telegraph Company v. Colson*, L. R. 6 Ex. 108; *McCann v. Waterloo County Fire Insurance Company*, 34 U. C. Q. B. 376. There is no power in the overseers to alter the address of a voter in the register of votes sent to them for publication: *Noseworthy v. Buckland in the Moor*, L. R. 9 C. P. 233. The post office certificate of registration of a letter is issued under the departmental regulations, and not under the Post Office Act. See pp. 119 and 121 ante.

dence (o) and information (p) before him in support of any claims for addition to the list of voters, or of any proposed amendments or corrections, (q) but not including any objection to the insertion of any name, which he shall merely

(o) There is a wide difference between evidence and proof, which is the effect of evidence: *Powell on Evidence*, 8. Evidence includes all legal means, exclusive of mere agreement, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation: *Taylor on Evidence*, s. 1. By the Indian Evidence Act of 1872, "Evidence" means and includes: (1) All statements which the Court permits or requires to be made before it, by witnesses in relation to matters of fact under inquiry. Such statements are called oral evidence. (2) All documents produced for the inspection of the Court. Such documents are called documentary evidence. A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said not to be proved when it is neither proved nor disproved, (s. 3.)

(p) The term "information" is used in some sections of the Act, but usually in connection with the word "evidence," with which it would therefore appear to be *ejusdem generis*, and not as authorizing parol or written unsupported statements affecting the franchise of electors. The qualification or disqualification of persons claiming the *status* of voters can only be determined according to the usual course of the courts in judicial proceedings. It has ever been a standing rule of the courts only to decide questions of fact on "evidence." "It has been an ancient observation on the laws of England that whenever a standing rule has been wantonly broken in upon by statutes or new resolutions, the wisdom of the rule has in the end appeared from the inconveniences that have followed the innovation, and the Judges and sages of the law have therefore always suppressed new and subtle inventions in derogation of the common law:" *Broom's Legal Maxims*, 109. "Where the Court cannot take judicial notice of a fact, it is the same as if the fact had never existed:" *Ibid.* 121. Declaration are allowed by the Act of 1878 (Imp) in respect of misdescriptions on the register of voters (s. 24.) See notes p. 50 *ante*.

(q) At this sitting the Revising Officer may (1) add the names of persons who establish their right to vote, and (2) amend or correct entries already on the list of voters. His jurisdiction is apparently limited to the cases in respect of which the week's notice referred to in the preceding section has been given; and he may then dispose of them; or as to "claimants whose

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note on the list opposite the name objected to ; (r) and he shall then and there correct the lists, on the said basis, to the best of his judgment and ability, upon such evidence and information, (s) and shall note every objection on the said lists as aforesaid ; he shall also attest with his initials any addition or change therein ; (t) and he shall also append to such lists the names of claimants whose claims he has not admitted, (u) and shall sign such appended lists. (v)

How to be
corrected
and revised.

21. The Revising Officer, having completed the said preliminary revision of the said first lists for the electoral district, or such portion thereof as is within his commission, shall sign the same as such Revising Officer and certify each of the said lists, and shall, on or before the first day of

Certifying
revised lists.

claims he has not admitted," he may reserve them for the final revision, (s. 26 post). The question which a Revising Barrister has to decide for himself, whenever a person claims to be placed upon the register of voters, is this, "If an election were now going on, would the claimant be legally qualified to vote?" *Powell v. Bradley*, 11 L. T. N. S. 602.

(r) These words clearly exclude a jurisdiction, at this sitting, to strike off any names objected to. A Revising Barrister is not authorized to strike out the name of a voter not objected to, though the Court had decided, in an exactly similar case, that the voter cannot in fact have a sufficient qualification: *Smith v. James*, L. R. 1 C. P. 138. Where in revising the burgess lists, the name of a householder which had not been objected to was struck off, a *mandamus* was granted to re insert: *Reg. v. Dover*, 11 Jur. 710, *affd.*, 11 Q. B. 260. Where the revision court erroneously determined that certain notices of objection were invalid and refused to inquire into the qualifications of the persons objected to, a writ of *mandamus* was granted commanding a court to be held to revise the list, although the time limited had elapsed: *Reg. v. Monmouth*, L. R. 5 Q. B. 251.

(s) See note (p) *ante*.

(t) There is a similar provision in the Imperial Act of 1843. See notes to s. 27.

(u) The object of appending the unadmitted claims to the list of voters is that the names of the claimants may be published in the printed lists for general information, pursuant to s. 23 *post*.

(v) This provision is directory. The object of having the officer's name to the lists is to authenticate them: *Re Goderich Voters' Lists*, 6 Ont. Pr. R. 213. A list not so signed is not invalid: *Morgan v. Perry*, 17 C. B. 334.

Division of electoral district into polling districts.

Priviso: in cases of voters much scattered.

Numbering polling districts.

May, one thousand eight hundred and eighty-six, by an order under his hand, in the form F in the schedule to this Act, divide every city, town, ward, parish, township or other municipal or corresponding division in the electoral district (or in default of such municipal or other corresponding division, every tract of land therein) having, according to the list relating to it, more than three hundred voters therein, by well defined boundaries, such as streets, highways, side lines, concession lines or the like, into polling districts, in such manner that the number of voters in the several polling districts in the electoral district shall be as nearly equal as may be, and shall not in any one case exceed two hundred: (*w*) Provided always, that where the electoral district does not contain three hundred voters, or where the voters are scattered over a large extent of country, the said Revising Officer may, nevertheless, sub-divide the electoral district into as many polling districts as he thinks advisable for the convenience of the voters, even though the number in each be less than two hundred.

22. The polling districts in each municipality or other corresponding division as in the next preceeding section mentioned shall be numbered, with a local designation at-

(*w*) The Imperial Act of 1867 authorizes (s. 34) Justices assembled in the Court of Quarter Sessions to divide the county into polling districts, and to assign to each district a polling place, in such a manner as to enable each voter, as far as practicable, to have a polling place within a convenient distance of his residence; and also to name the place therein where the Revising Barrister is to hold his Court. In boroughs, the polling districts are defined by the town council, or Justices in petty sessions: 35 & 36 Vict. c. 33, s. 5. The polling districts defined under the above clause may be altered from time to time under s. 41, *post*. A non-compliance with the directions of the Act, or any informality relating to polling districts or places will not affect the validity of an election: *Greenock*, 1 O'M. & H. 249. One purpose of having election districts designated by some public record is, that all parties interested may know where to resort to find the ballot-box; some to go there to vote, others to watch for illegal voters; all have an interest in knowing where the law of the land has directed the election to be held: *Chase v. Miller*, 41 Penn. St. 403.

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tached to such number, in and by the order of the Revising Officer by which they are established, and such order shall be, forthwith after the making thereof, filed and kept by the Revising Officer for the purposes of this Act: (x) Provided always, that in Prince Edward Island polling divisions may comprise parts of several townships. (y)

Proviso: as to P. E. Island.

23. Immediately after the sub-division of the municipality into polling districts as in section twenty-one provided, the Revising Officer shall prepare from the first lists of voters as preliminarily revised by him as aforesaid, a separate list of voters for each polling district, containing in alphabetical order the names of all voters qualified to vote in such polling district, (noting the names objected to) (z) and in the same form as nearly as may be, as the form referred to in section fifteen, and shall sign the same as such Officer, (a) and shall append thereto the names of claimants whose claims have not been admitted. (b)

Separate list for each polling district.

Unadmitted claims to be appended.

FINAL REVISION OF THE FIRST LISTS OF VOTERS.

24. After the completion of the preliminary revision of the lists of voters and the preparation of lists for polling districts, and after the signature of the latter by the Revising Officer, (c) he shall, for the purpose of making the final revision thereof, cause a sufficient number of copies of each such list, with the description of the polling dis-

Publication of list with description of polling districts.

(x) By the Imperial Act of 1873, a copy of the order dividing the electoral district into polling districts is to be sent to the Secretary of State, to be by him laid before Parliament: (s. 5.)

(y) See s. 26, *post*.

(z) See note (u) p. 131, *ante*.

(a) See notes (t) p. 119, and (v) p. 131. *ante*.

(b) See note (u) p. 131, *ante*.

(c) See notes pp. 119 and 131.

Posting up
in public
places.

Copies to be
procurable at
fixed rates.

Copies to be
sent to cer-
tain officials.

trict to which it relates, to be printed, and shall certify the same as such Officer, and on or before the first day of June, one thousand eight hundred and eighty-six, shall publish the same by causing copies to be posted up in three conspicuous public places in the polling district to which it relates, (d) and by delivering copies thereof to any persons applying for the same, upon being paid according to the rates mentioned in section sixteen, but not to exceed ten cents for a copy of the list for each polling division, (e) to each of which copies shall be appended a notice in the form G in the schedule to this Act, fixing a time and place for the final revision of each of the said lists; (f) and the said Revising Officer shall also deliver or transmit, by registered letter, (g) copies of such lists as follows: to each member of the council of every city, town, township, or village in any electoral district, and to the clerk and treasurer thereof, and to each postmaster in every such municipality or polling division one copy of

(d) See the provision from the Imperial Act, p. 122. The day of posting up, not the day of the delivery or transmission of the lists to the officers and persons thereafter named, is the day from which the computation of the time for holding the Revision Court is to commence: see s. 26 *post*. The time for making complaints under the Ontario Voters' List Act, R. S. O. c. 9, commences to run from the date of posting of the lists in the Municipal Clerk's office, and not from the date of sending copies of such lists to the persons and officials named in the Act, and this notwithstanding the clerk negligently or wilfully withholds sending the lists to the parties named: *Re L'Original Voters' Lists*, 9 Ont. Pr. R. 425.

(e) The rates are prescribed by s. 16 *ante* p. 122.

(f) The time must be some day after the expiration of the "five weeks after the publication by posting up of the lists" (s. 26). The place must be within a known territorial division: i. e., the city, town, township, parish or village which includes the polling district (*Ibid.*); except in cities, towns and villages where it may be in "some central place" therein for the several polling districts in such municipalities (s. 48). And in that case the Revising Officer may appoint a separate day, and hold a separate Court for each polling district (*Ibid.*) There is a special provision relating to polling districts in Nova Scotia and Prince Edward Island in s. 26 *post*.

(g) See notes pp. 121 and 129.

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every list relating to such municipality or polling division ; to the sheriff, warden, clerk of the peace and county judge of the judicial county or district, one copy of each of the several lists relating to such electoral district, or part of electoral district which may be within such judicial county or district; (h) and ten copies of each of the several lists relating to such electoral district to the member or members of the House of Commons for the said electoral district or part of an electoral district, and to the unsuccessful candidate or candidates at the last election for the same.

And to member of H. of C. and unsuccessful candidate.

25. The Revising Officer shall also at the same time publish the said notice appointing the time and place for the said final revision, in a newspaper, if any there be, published in the municipality or other division of the electoral district to which the polling district affected by such list belongs, by one insertion thereof in such newspaper. (i)

Notice of time and place for final revision.
Publication.

(h) The object of the Act in directing copies of the second lists to be sent to the above named officers, is to ensure publicity for the lists, so that all electors may examine them and take steps to ensure a proper revision. Though the Act does not direct that each of these officers on receiving the lists should "post up one of them in a conspicuous place in his office," as in s. 17, it would be proper for them to do so. "We cannot suppose that the Legislature intended that if the Clerk omitted any of those things which he is directed to do,—such as making out the list alphabetically, or omitting to post up a copy in his office, or transmitting a less number of copies to some of the parties than the Act requires,—that the Judge could not proceed to revise the list on complaint being made under the statute. All the proceedings relative to the Clerk, are merely directory with a view to notifying the electors of the state of the lists ; and when, as in this case, such notification was effectually given, and the plain object and general intention of the statute has been in fact complied with, it would be the duty of the Judge to proceed with the revising." *Per Morrison, J., Re Goderich Voters' List*, 6 Ont. Pr. R. 215.* The sending of the lists to the persons and officials named is directory only, and any negligent or wilful withholding of such lists, or a false certificate as to such sending, will not effect the legal revision or authentication of such lists: *Re L'Original Voters' Lists*, 9 Ont. Pr. R. 425. See notes to s. 16 ante.

(i) There is a difference, perhaps unintentional, in the directions for publishing the notices of the sittings of the Revision Courts. By s. 18 notice of the Preliminary Revision is to be given by "at least one insertion" "in one or more newspapers." By this section, notice of the Final Revision is,

Final revision to be five weeks after posting lists.

Place.

P. E. I.

N. S.

26. The day to be as aforesaid for such final revision shall not be less than five weeks after the publication by posting up of the said lists as aforesaid, (j) and the place shall be in the city, town, township, parish, incorporated village or other known territorial division (and in the Province of Prince Edward Island, the existing Provincial electoral district) which includes the polling district, and in the electoral districts of the Province of Nova Scotia, in such places comprising not less than three polling districts as the Revising Officer may think most convenient; and any person (k) desiring to object or add to, or in any way amend or correct such list on the final revision, shall have the right to do so, (l) if he shall have

to be given by "one insertion" "in a newspaper." The spirit of the Act is to give full publicity to all concerned, of the sittings of the Revision Courts; and it would therefore be more in harmony with that spirit to construe this section according to the directions in s. 18.

(j) The computation of time should be made from after the last day on which the lists were published "by posting up." The day of posting the lists is not to be included in reckoning the "five weeks after the publication by posting up of the lists." Where goods were sold to be paid for "in two months' time," it was held that the last day was included, and the first day, the day of sale, was excluded: *Webb v. Fairmaner*, 3 M. & W. 473. So where a patent contained a proviso that the specification was to be filed within a month's time next after the date thereof, the day on which the letters patent were granted was held to be excluded: *Watson v. Pears*, 2 Camp. 294. See note (y) p. 53, note (i) p. 125, and note (d) p. 134 ante.

(k) "Any person;" see note (g) p. 124, ante. A relator in a *quo warranto* case is not necessarily bound to prove his interest, unless the respondent question it, by denying it, and showing, or at least alleging, some ground for his denial: *Reg. ex rel. Bartliffe v. O'Rielly*, 8 U. C. Q. B. 617; s. c. Har. & Ho. Mun. R. 459. Where, on an election petition alleging that the election was held on illegal voters' lists, the election Judge found the fact as alleged, but also held that the petitioners, owing to the illegal lists, were not qualified to petition. On appeal, the judgment was reversed, and it was held, that an election conducted on illegal voters' lists will be set aside notwithstanding that the petitioners fail to prove themselves qualified to petition: *Montreal Centre*, 18 L. C. J. 323. The proper person to bring an action is the person whose right has been violated,—a rule not applicable merely to the procedure of this country, but one affecting all sound procedure: *Per Willes, J.*, in *Gray v. Pearson*, L. R. 5 C. P. 574.

(l) "The right to do so;" i. e. to object or to add to, or in any way amend, the lists on the final revision. The maxim, "a personal right of action dies

previously given the proper notice for that purpose at the preliminary revision, (m) or upon giving the same notice and following the same procedure as is provided for in section nineteen as to objections or amendments on the

Persons object-
ing are to
give notice
of objections
and claims.

with the person," applies to cases under this Act. "It may be the notice would fall if the objector were dead:" *Per Byles, J. in Proudfoot v. Barnes, L. R. 2 C. P. 94.* Where the Revising Barrister died without having finally settled the terms of a special case, the Court refused to allow the case to be entered: *Nettleton v. Burrell, 7 M. & Gr. 35.* By the Imperial Act of 1878 objections to borough (but not county) voters may be withdrawn by a notice in writing, if served seven days before the first court. And on the death of an objector any person duly qualified to make objections may have the proceedings revived before the time for revision (s. 27.) See also, note (k) ante.

(m) During the earlier Revision Courts under the Imperial Registration Acts, every possible technical objection appears to have been taken to the notices which the Acts prescribed should be given in respect to objections to voters, or claims to be registered. And many of the cases seem to indicate that the Revising Barristers and Courts were more astute to give effect to technicalities,—to show how blunders could be made insuperable to defeat the law, and the right to the franchise,—than to adjudicate upon the true right of the person whose vote was claimed or objected to. Fortunately for the interests of justice, the reported decisions of our Courts may be referred to as giving truer law to aid Revising Officers in sweeping aside technical objections, or asserted blunders, so as to get at the very right and the very justice of every claim or objection. The franchise is not to be lost to any one who is really entitled to vote, if his right can be maintained in a reasonable view of the requirements of the Act: *Reg. ex rel. Chambers v. Allison, 1 Can. L. J. 244.* The inclination of the Courts is in every way to favour the franchise: *Reg. ex rel. Ford v. Cottingham, 1 Can. L. J. 214.* Technical objections as to matters of form before a County Judge on the revision of the voters' lists ought not to prevail, when no one can be misled or injured by the alleged errors; and when the County Judge gives effect to such objections a mandamus will be ordered: *Re McCulloch and the Judge of Leeds and Grenville, 35 U. C. Q. B. 449.* "The presumptions of law are always in favour of the franchise; and Acts of Parliament should be worked out to confer the franchise on those who seem to be within the spirit of the law entitled to it, rather than be strained to deprive parties of a right to vote:" *Per Richards, C. J., Ibid.* "The Court is anxious to allow the person who claims it, the right to exercise the franchise in every case in which there has been a reasonable compliance with the statute which gives him the right he seeks to avail himself of. No merely formal or immaterial matter should be allowed to interfere with the voter exercising the franchise:" *Per Blake, V.C., Re Lincoln (Borrowman's Case), 2 App. R. 323.* "The substance of justice, which I have always kept in view in these election cases, is, that the matter shall not be affected by any slips of form:" *Per Blackburn, J., Oldham, 20*

Two weeks
notice.

preliminary revision, (n) and the notice of such objections or claims from any person shall be given in the manner specified in the said section nineteen, not less than two weeks before the day named for the final revision. (o)

L. T. N. S. 304. "The policy of the law is, to inquire into the regularity of elections, and the Court will not, if possible, be astute to discover and give way to technical objections to do away with that enquiry." *Per Spragge, C., North York, 1874.* The powers of the Revising Officer under s. 43,—to amend,—to give leave to amend,—to direct notice to other persons,—to adjourn hearings,—or applications to amend,—and not to be bound by the strict rules of evidence, or forms of procedure,—to hear and determine all matters so as "to do justice to all parties,"—confer upon him a larger trust and area of judicial power than Parliament has considered it proper to confer upon Judges of higher tribunals. See further the notes to s. 43, and (m) to s. 36.

(n) The notices are to be served as follows: (1) On the "Revising Officer" by (a) depositing with, or (b) mailing to, him by registered letter, at his office or place of address, a notice in form F. (2) On the "person whose name is objected to," by (a) delivering such notice to such person, or (b) mailing the same by registered letter to his last known post office address. See notes pp. 121 and 129.

(o) The business to be transacted at the Revision Court is: to hear and dispose of any (1) objection, or (2) complaint, and any (3) application to (a) add to, (b) amend, or (c) correct, the list as in the preceding section mentioned. It may sometimes become a question how far the Revising Officer, at the final revision, can rehear a case decided by him at the preliminary revision. Where the same question has been once inquired into and judicially determined between the parties, it is *res judicata*, and the maxim "a man shall not be twice vexed for the same cause of action" applies: *Broom's Legal Maxims* 316. By the Imperial Act, 6 Vic. c. 18 s. 98, only an "express decision" of the Revising Barrister, on the validity or invalidity of any vote was appealable; and these terms have received judicial interpretation in many cases. There must be a *bona fide* objection raised before the revising barrister to bring the case within the term "express decision." *Monmouth, K. & O.* 112. The following have been held to be "express decisions." Where the parties were present and prepared to argue the case, but the Revising Barrister stated that he would expunge and retain respectively the names of all who had been expunged or retained by the former Revising Barrister, and refused to hear evidence, and inserted the names in his own handwriting: *Wareham, Wolf. & Dew* 95. Where the decision of the Revising Barrister turned upon a preliminary point, as upon the validity of a notice of objection: *Bedford, P. & K.* 117. "Inasmuch as the vote of G. S. did actually become the subject of discussion before the Revising Barrister, that circumstance suffices to bring it within the jurisdiction of the Committee without determining whether the notice of objection was or was not perfect in form." *Ripon, C.*

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27. At the time and place named in the notice of the Revising Officer, he shall hold open Court (p) for the said

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& R. 292 : s. c., P. & K. 204. Where the decision of the Revising Barrister was on an objection to the spelling of the voter's name, but it was not proved that he was objected to on any other ground : *Oldham (Firth's Case)*, 1 O'M. & H. 155. Where a voter's name, duly objected to, was struck off by the Revising Barrister, owing to the non-attendance of such voter at the Revision Court : *Ibid. (Harper's Case)* 157. Where, after the notice of objection to the vote of C. was held bad by the Revising Barrister, and after he had so decided, his attention was called to the fact that similar notices had been given in a great many other cases, including B.'s case, but the names were not mentioned to him ; and he was not informed of the objection to B.'s vote : *Held*, an express decision, that after deciding on C.'s case it was not necessary to get a formal decision on B.'s case to bring it within the rule : *Bewdley, (Baker's Case)* 1 O'M. & H. 177. The following have been held not to be "express decisions." Where two voters were objected to, and after hearing evidence and the parties on both sides, the Revising Barrister decided that he would expunge the names, but before he actually erased them an arrangement was entered into between the parties, by which the objections were withdrawn and the names retained on the list : *1st Harwich*, 1 P. R. & D. 303. See also *Oldham, (Hestor's Case)* 1 O'M. & H. 156. Where a voter had been objected to, and the Revising Barrister had decided to expunge the name, but by mistake it was retained : *Huntingdon, (Owen's Case)* Wolf. & Dew 198. Where a voter's name had been struck off by the mistake of the Revising Barrister : *Oldham, (Ogden's Case)* 1 O'M. & H. 156. Where a voter's name had been struck off by the Revising Barrister, but the voter had received no notice of the objection against his vote : *Ibid, (Lees's Case.)* The Election Judge can only inquire into the cases on which the Revising Barrister has pronounced an express decision : *Coventry*, 1 O'M. & H. 107. Where the names of certain occupiers of houses in a borough were placed on the list of voters, although the rates in respect of their houses were made upon and paid by their landlord, and their names did not appear on the rate roll ; but no objection to their right to vote was taken before the Revising Barrister, and he certified the lists in the usual way : *Held*, that as there had been no express decision, no objection to their votes could now be taken on an election petition, the register of voters being conclusive evidence of their right to vote : *Ryder v. Hamilton*, L. R. 4 C. P. 559. See further as to "express decisions :—" *Rogers on Elections*, (10th ed.) pp. 547-550. The validity of a notice of complaint under R. S. O. c. 9 s. 9, may be raised before the Judge after it has been received and entered by the clerk ; the clerk having no judicial duty to perform in respect of it : *Re Simpson and the Judge of Lanark*, 9 Ont. Pr. R. 358.

(p) "Open Court." "A court is defined to be a place wherein justice is judicially administered." 3 Co. Litt. 322. It is given by our law to the Judges not so much for their own sake as for the sake of the public, and for the advancement of justice, that being free from actions they may be free in thought, and independent in judgment, as all who are to administer justice ought to

Hearing.	final revision, and shall hear and dispose of any objection or complaint and any application to add to, amend or correct the list, as in the next preceding section mentioned, of which notice shall have been given as aforesaid, (q) hearing the parties making the same, if they appear, (r) and
Evidence.	any evidence that may be adduced before him in sup-

be: *Broom's Legal Maxims*, 82. "Every private communication to a Judge, for the purpose of influencing his decision upon a matter publicly before him, is and ought to be reprobated. It is, of course, calculated, if tolerated, to divert the course of justice; and is considered, and ought, more frequently than it is, to be treated as what it really is,—a high contempt of Court. It is too often excused on account of the station in life of the parties; and their supposed ignorance of what is due to a Court of Justice. If this was not intended as a private communication, why was it not brought before the Court in the usual manner, through the solicitor and counsel of the party, who alone can be recognized as representing him? I have received assurances in the letter that nothing disrespectful to myself was intended by that communication. I never considered it in that light; but as a Judge of the Court, against which the contempt has been committed, I am bound to express my high reprobation of the course pursued." *Per* Lord Cottenham, L. C., in *Re Dyce Sombre*, 1 Mac. & Gor. 122. It will be a lesson to all inferior tribunals to take care, not only that in their decrees they are not influenced by their personal interest; but to avoid the appearance of labouring under such an influence: *Per* Lord Campbell, L. C., in *Dimes v. Grand Junction Canal Company*, 3 H. L. Cas. 759. "It is an indispensable requirement of justice that the party who has to decide shall hear both sides giving each an opportunity of hearing what is urged against him:" *Per* Erle, C. J., in *Re Brook*, 16 C. B. N. S. 416. See further the notes to s. 43 *post*.

(q) The service of all notices authorized by this section must be made "not less than two weeks before the day named for the final revision." This provision may also be construed as subject to the powers of amendment and adjournment vested in the Revising Officer by s. 43. But the statutory period for giving notices cannot be varied: See note (e) to s. 43. The validity of the notice of complaint under the Ontario Voters' List Act can be raised before the judge, after it has been received and entered by the clerk, who has no judicial duty to perform respecting it: *Re Simpson and the Judge of Lanark*, 9 Ont. Pr. R. 358. See note (o) p. 138.

(r) In case the party objecting to persons on the list fails to appear, it is doubtful whether the Revising Officer could, under s. 44 *post*, award costs. In proceedings under statutes it is the settled rule that no costs can be awarded except such as are authorized by the particular Act. A proceeding under a statute is not a proceeding in an action: *Re Charity Schools of St. Dunstan*, L. R. 12 Eq. 537. No one can be ordered to pay costs of an

port of or in opposition thereto, (s) and shall either affirm or amend the list accordingly, (t) as to him seems right and proper, (u) attesting with his initials, any changes,

Correction of lists.

ex parte application : *Nokes v. Gibbon*, 3 Jur. N. S. 282. An appellant wrote to the respondent withdrawing the notice of appeal as irregular. The respondent applied *ex parte* for costs : *Held*, that notice of motion must be given : *Re Oakwell Collieries*, 7 Ch. D. 706. See note (i) to s. 44 *post*.

(s) See notes p. 130, and to s. 43 *post*. An objector has a right by cross-examination, or by evidence, to question the validity of a person's right to be registered; and a claimant declining to submit to examination was properly rejected : *Hoey's Case*, 5 Ir. C. L. 62. Where the claimant was sworn and examined touching his right, but on cross-examination, refused to answer, questions affecting the validity of his right to be registered as a voter, his claim was rejected by the Revising Barrister, and such rejection was affirmed on appeal : *Disney's Case*, 1 Alc. Reg. Ca. 118. The respondent's name appeared on the previous voters' list and on the current year's list. He was summoned by the objector, who proposed to examine him to prove that he was not qualified to be on the list. The respondent declined to be examined until some evidence was given to displace his right, and the Revising Barrister so ruled : *Held*, reversing such ruling, that the respondent was bound to submit to such examination : *Peterson v. Balfour*, 10 Ir. C. L. 553. "Suppose he had had a qualification, and had admitted to some person his having lost that qualification, can it be said that he ought not to be examined as to that point?" *Per* Greene, B., *Ibid*.

(t) Under the Imperial Act (41 & 42 Vic. c. 26, s. 28), the Revising Barrister has power to expunge the names of persons from the lists for various causes—whether objected to or not. But before expunging the names he is to causes such notice as he thinks necessary to be given to such persons. No similar independent power is given by this Act to the Revising Officers. See further notes (o), p. 138, and (h) to s. 33, *post*.

(u) "As to him seems right and proper," or as s. 43 says "so as in his judgment to do justice to all parties." "'Discretion' when applied to a Court of Justice means sound discretion guided by law. It must be governed by rule, not by humor; it must not be arbitrary, vague, or fanciful, but legal and regular." *Per* Lord Mansfield, C. J., in *Rex v. Wilkes*, 4 Burr. 2539. Judicial power, as contradistinguished from the power of the law, has no existence. When Courts are said to exercise a discretion it is a mere legal discretion to be exercised in discovering the course prescribed by the law; and when that is discovered it is the duty of the Court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the Judge, but always for the purpose of giving effect to the will of the Legislature, or in other words, to the will of the law : *Osborne v. Bank of*

additions, or erasures in the list. (v)

Revising
Officer to
have powers
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record.

As to wit-
nesses and
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28. The Revising Officer shall, for the purposes of the said preliminary revision of the first lists of voters and of the final revision of the first lists of voters for polling districts, as well as for the revision of any subsequent lists of voters in polling districts under this Act, have all the powers of any Court of Record in the Province, (w) as to compelling the attendance and the examination of witnesses, the production of books and documents, and the taking of evidence under oath before him, at any court

the United States, 9 Wheat. 866. There is no Court whose discretion is not controlled by precedent and sound reason: *Arg.*, *Almon v. Fairbanks*, 1 Russ. & Ches. N. S. 418. See further note (p) p. 139, and the notes to s. 43.

(v) By the Imperial Act 28 Vic. c. 36, s. 15, the Revising Barrister, before signing, is to read out, in open Court, the names expunged, and inserted, by him, and all corrections made by him. Until the lists are actually signed and delivered, the register of voters cannot be said to be complete, even although, in the meantime, printed copies of the register have been issued by the Clerk of the Peace, and bear his name: *Brumfit v. Bremner*, 9 C. B. N. S. 1. In this case, as late as two months after the statutory period, and before the signature of the proper officer, and delivery to the Sheriff (he being the custodian of the lists), it was discovered, on the application of a voter, that his name was accidentally omitted,—the Revising Barrister not having expunged the name, but having inadvertently caused the appearance of an erasure of the name: *Held*, that the Clerk of the Peace was justified in causing the name to be interlined, and that the name was duly registered: *Ibid*. Where the name of a voter was struck off the register of voters, by the mistake of the Revising Barrister, and the voter tendered his vote at the polls: *Held*, that the vote could be counted. *Oldham (Ogden's Case)*, 1 O'M. & H. 156. So when the voter was struck off improperly, *Ibid*. See notes pp. 119, and 131, and note to s. 57.

(w) A Court of Record is that whereof the acts and judicial proceedings are enrolled for a perpetual memorial and testimony; and are of such high and super-eminent authority that their truth cannot be called in question: 3 *Stephens's Black.* 271. All Courts of Record are Courts of the Sovereign, in right of the Crown and royal dignity, and therefore every Court of Record has authority to fine and imprison for contempt of its authority committed *in facie*. *Ibid*. So that the very erection of a new jurisdiction, with the power of fine or imprisonment, makes it instantly a Court of Record: 3 *Black. Com.* 25. But every Court of Record has not necessarily a power to fine and imprison: *Ibid n*, citing 1 Sid. 145. Where an Act establishes a

or sittings held by him for any such preliminary or final revision, and shall have, generally, all the powers of a Court of Record. (x)

29. After the lists for the several polling districts in an electoral district have been so completed, revised and corrected, they shall be certified in the form C contained in the schedule to this Act by the Revising Officer, and kept by him for the purposes of this Act; and a duplicate of each, certified as aforesaid, shall be transmitted

Copies of certified lists to be sent to the Clerk of the Crown in Chancery.

Court for a particular jurisdiction, the true construction of it is that everything which is to be done under the authority of the Court is to be done within the jurisdiction of the Court, unless the Act either in express terms, or by necessary implication, enacts that it may be done elsewhere: *Ex parte O'Loughlen*, L. R. 6 Ch. 406. A Court of limited jurisdiction has no jurisdiction beyond what the Legislature has given it: *Rorke v. Errington*, 7 H. L. Cas. 617. A want of jurisdiction cannot be cured by the assent of parties: *Foster v. Usherwood*, 3 Ex. D. 3. Error lies at common law for some supposed mistake in the proceedings of a Court of Record: 3 *Black. Com.* 407. See note (m) to s. 36.

(x) Every Court of Record has attached to its jurisdiction and centered in it the power to punish for contempt; but if the Court is of inferior jurisdiction a Superior Court may intervene and prevent any usurpation of jurisdiction by it, and if it treats conduct as a contempt, which there is no reasonable ground for so treating, may interfere to protect the party improperly punished: *Ex parte Pater*, 5 B. & S. 299, s. c. 10 L. T. N. S. 376. No person should be punished for contempt of Court, which is a criminal offence, unless the specific offence charged against him be distinctly stated, and an opportunity of answering it given to him: *Re Pollard*, L. R. 2 P. C. 106, 120. When a barrister during the sitting of a County Court used words which the Judge considered were used to insult the Court; on being told that unless he offered an apology he would be fined, to which he replied he had nothing to say, and he was then adjudged guilty of a contempt of Court and fined: *Held*, on an application for a *certiorari*, that there was no excess of jurisdiction, and the Court would not interfere: *Re Lees and the Judge of Carleton*, 24 U. C. C. P. 214. "Striking in the King's Superior Courts of Justice in Westminster Hall, or at the Assizes, is made more penal than even in the King's palace:" 4 *Black. Com.* 125. The recital in a warrant of commitment that the party did wilfully insult the Judge during his sitting, is a direct adjudication that he had done so; and it is not necessary to set forth in such warrant the nature of such insult: *Levy v. Moylan*, 10 C. B. 189. Where a Revising Barrister improperly ordered a person to be removed from his Court: *Held*, liable to an action: *Willis v. MacLachlan*, 1 Ex. D. 376.

Clerk to publish notice in *Gazette* and its effect, except in case of appeal.

Proviso: as to ballots of persons whose names are subjects of an undecided appeal.

forthwith by him to the Clerk of the Crown in Chancery at Ottawa, (y) who, on receipt of all the said lists for any electoral district, shall, in the then next issue of the *Canada Gazette*, insert a notice in the form H contained in the schedule to this Act, on and after the publication of which notice in the *Canada Gazette*, the persons whose names are entered on the said lists as voters, shall be held to be duly registered voters in and for such electoral district, subject to correction or amendment by the judgment on appeal as hereinafter mentioned: (z) Provided, however, that in the event of any such appeal, such list after the publication of the last mentioned notice in the *Canada Gazette*, shall apply to every election for such electoral district, taking place before such appeal has been disposed of, or the result thereof communicated to the Revising Officer; but the ballot of any person whose name has been included in the certified list of voters, and is the subject of an undecided appeal, shall be numbered by the deputy returning officer, and a corresponding number shall be placed opposite his name, on the poll book; (a) and upon the counting of the ballots, the ballots so numbered shall be by the deputy returning officer separated from the ordinary ballots and returned to the proper offi-

(y) By 31 & 32 Vic. c. 65, s. 37 (Imp.) the clerk, or other officer, having the charge of the register of voters is required to transmit to the Secretary of State every year, a printed copy of the register of voters in force in the constituency.

(z) The publication of this notice in the *Canada Gazette* operates as a repeal of s. 40 of the Dominion Elections Act, 1874, and as bringing into force this and s. 10 of this Act, within the electoral district named in the notice. See note (u) p. 106 ante.

(a) The effect of this provision is to partially alter the clauses relating to secret voting provided by the Dominion Elections Act, and to introduce, as to the voters here referred to, the practice of numbering ballots provided for in the Imperial and Ontario Ballot Acts. By the scheme originally embodied in the Imperial Bill, it was proposed that the ballot should be entirely secret, without power of following the vote by means of a counterfoil. The House of Lords amended the bill by introducing the present system of counterfoils: *Leigh & LeMarchant on Elections* (4th ed.) 180.

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cer, sealed up at the same time as other ballots, to await the decision of such appeal;—and if under such decision the name of any such person shall be struck from the list of voters, the vote given by such person shall be ascertained from his ballot, and shall be struck from the poll upon a recount; (b) and if any person whose name has been excluded from such certified list of voters, and whose exclusion is the subject of an undecided appeal, shall desire to vote, the deputy returning officer shall receive his ballot and shall number the same, and the name of the voter in the poll book, and keep separate such ballots, as hereinbefore provided; and if upon such appeal, the decision of the Revising Officer shall be maintained, the vote of such person may be ascertained and struck from the poll upon a recount; and if an appeal respecting the vote of any person placed on the poll book under the provisions hereof, be not decided within the delay fixed by the existing election law for a recount, such delay shall be extended until six days after the decision of the appeal.

Effect of the decision of such appeal.

Extension of time for recount in certain cases.

30. The Revising Officer and the Clerk of the Crown in Chancery shall supply copies of such lists to any person or persons applying for the same and paying therefor at the same rate as is to be payable for copies of lists furnished under section sixteen. (c)

Copies of lists.

Payment for same.

(b) There is no provision directing how these votes are to be dealt with before the tribunal of appeal determines whether the parties referred to have the right to vote. But it would seem from the words "struck from the poll on a recount," that they should be counted with the other ballots. But if so counted, a difficulty will occur in carrying out the provisions of this section where the Judge appealed to allow some of the votes and disallow others. On the recount, the poll-book, without which the ballots of the unqualified voters cannot be identified, is not required to be produced before the Judge. See as to a recount of ballots 41 Vic. c. 6, s. 14 (D.) amending the Dominion Elections Act, 1874. The action of a County Judge on a recount of election ballots, is not reviewable by a Superior Court: *Re Centre Wellington*, 44 U. C. Q. B. 132. By the Imperial Act, 6 Vic. c. 18 s. 69, there is no incapacity to vote while an appeal is pending. Nor will the decision of any appeal, given pending the writ of election, affect the poll or the return.

(c) See pp. 121, 122.

Lists finally corrected to be valid until corrected on appeal or superseded by others.

Binding on Election Court.

Certified copies to returning officer.

31. After the lists of voters have been so finally revised, or amended and corrected on appeal and certified and brought into force as hereinbefore prescribed, and until other lists are, in a future year, under this Act as herein-after provided, made, revised, amended and corrected on appeal, and certified, and brought into force in their stead, those persons only whose names are entered upon such lists as so revised, amended and corrected, shall be entitled to vote at any election of a member of the House of Commons, in the polling sub-division and electoral districts for which such lists were respectively made; and the said lists shall be binding on any Judge or other tribunal appointed for the trial of any petition complaining of an undue election or return of a member to serve in the House of Commons. (d)

32. The Revising Officer shall also furnish to the returning officer for his electoral district, or such portion thereof as is within his appointment, within forty-eight hours after demand of the returning officer therefor, one copy of the list of voters then in force for each polling district in such electoral district, with a description of such polling district as contained in the order of the Revising Officer constituting the same, which list and copy of description shall be duly certified by the Revising Officer. (e)

FUTURE LISTS AND REVISION THEREOF.

Revision of lists after

33. On or as soon as possible after the first day of January in each year after the year of Our Lord one

(d) The register of voters for a Parliamentary Election is a document of such a public nature as to be admissible in evidence upon its mere production by the Returning Officer, and therefore an examined or a certified copy of it is also admissible: *Reed v. Lamb*, 6 H. & N. 75. See notes p. 46 ante.

(e) These copies are intended for the purposes of an election under the Dominion Elections Act, 1874. The above clause practically repeals the clauses in that Act directing the Returning Officer to obtain the voters' lists from the Registrar, Town Clerk, Clerk of the Peace, or such other officer as was by law the custodian of such lists. See also s. 46 post.

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thousand eight hundred and eighty-six, the Revising Officer,^{1886 and proceeding therefor.} being duly sworn as hereinbefore provided, (f) shall obtain a certified copy, or certified copies, as the case may be, of the last revised or final assessment roll or rolls, if any there be, in the electoral district or part of an electoral district for which he is appointed, and, where there are no assessment rolls, a certified copy or certified copies of the last revised list or lists of voters in such electoral district; and with such copies and such other information as can be obtained, he shall proceed to revise the lists of voters then in force under this Act for such electoral district, (g) entering thereupon the names of all persons not already in such lists, and who, according to the provisions of this Act, are entitled to have their names so entered, indicating in the proper columns thereof whether they are qualified in respect of real property as owners, tenants, occupants, purchasers in occupation under the Crown, or otherwise, and stating the number of the lots, portions of lots and concessions, streets, or other available description of real property in respect of which they are qualified, and their post office addresses as nearly as can be ascertained by the said Officer,—or as farmers' sons or other owners' sons as aforesaid, stating the number of the lots, portions of lots, concessions or streets or other available descriptions of the real property of their fathers or mothers in respect of which they are qualified as farmers' or other owners' sons as hereinbefore provided, or whether they are qualified in respect of income;—and as to the sons of farmers, or other owners' sons as aforesaid, and voters on income, stating also in such lists in the proper column thereof the residence and post office addresses of such persons as nearly as can be ascertained by him, and noting on the said lists the names of any persons who are dead (h) or who are not, according to the provisions of this

Revising and
correcting
former lists.

Contents of
revised lists,
as to qualifi-
cation, &c. of
voters.

(f) See note (h) p. 112 ante.

(g) The "lists" mentioned in s. 29 ante.

(h) This provision does not apply to the first list of voters prepared under ss. 15-29 (pp. 113 *et seq.*) The Revising Officer cannot, of his own motion, expunge

Initialing
corrections
and signing
corrected
lists.

Rolls *prima
facie* evi-
dence of
value.

Act, entitled to be registered as voters, stating the reasons of such note, and making any other verbal or clerical corrections which seem necessary; and he shall attest all such additions, erasures or corrections, with the initials, and sign such lists as such Revising Officer: Provided, that such assessment rolls as aforesaid shall be *prima facie* evidence of value. (i)

Publication
of corrected
lists.

34. After the said lists of voters have been so preliminarily revised, the said Revising Officer shall publish and distribute them, and notice of the time and place fixed by him for the final revision thereof respectively, as nearly as may be, in the manner and form provided for in sections twenty-four and twenty-five, in respect of the final revision of the first lists of voters in polling districts under this Act. (j)

Objections
how made
and dealt
with.

35. The practice and requirements provided for in sections twenty-six and twenty-seven, as to persons desiring to object to any name on the said first lists, or to add any name thereto, or otherwise to amend the same, shall apply to similar applications in reference to the lists to be prepared under the two sections next preceding. (k)

the names of persons who are dead, or who are not entitled to be registered as voters, as may be done by a Revising Barrister under 6 Vic. c. 18, s. 40 (Imp.) The Revising Officer is to note his findings on the list, with "the reason of such note." But his findings on questions of fact are to be made on "evidence" (ss. 27 and 35); and where the right to vote is impeached, on notice "to the person whose name is objected to;" but the Act has not prescribed a procedure for expunging "the names of persons who are dead."

(i) See notes pp. 48, 50 and (s) p. 72. This section is substantially the same as s. 15.

(j) See notes pp.

(k) This imports into the subsequent revisions of voters' lists the procedure prescribed for the first revision under this Act. See notes to s. 24, *et seq.*

36. At the time and place named in the notice required under section thirty four, the Revising Officer shall hold open court (l) for the final revision of the list for each polling district, and shall proceed, with the same powers as are assigned to the Revising Officer by section twenty-eight, as to the enforcing of the attendance of witnesses, the taking of evidence under oath, the enforcing of the production of books and papers, the adjournment of the court, and otherwise,—to hear the complaints, objections and applications made as hereinbefore provided, and the evidence in reference thereto, and to decide thereupon, adding to, striking off, or otherwise amending or correcting the lists accordingly, and attesting every addition, correction or erasure, or other amendment in the lists, with his initials, in the manner provided in section twenty-seven in respect of the final revision of the first lists of voters in polling districts. (m)

Court for final revision of lists and proceedings thereat.

Powers of revising officer.

(l) The Registration Courts are not Courts of law or equity for the decision of legal rights between parties; but are constituted for the determination of the right of parties to exercise high constitutional functions. The object of the Court is, to discover who are and who are not entitled to perform these functions, and to exercise these rights. The purpose of the Court is, to purify and make accurate the lists of persons who are to perform the functions of voting for persons who are to represent them in Parliament: *Per Romilly, M. R., in Re Andrew, 17 Jur. 1145.*

(m) The Revising Officer has complete jurisdiction under this Act to judicially determine who are, and who are not, entitled to the franchise, as voters at Parliamentary elections. Where he is "also the Judge of any Court," there is no appeal from his decision on any question of fact, to any higher tribunal; and his decisions on other questions can only be reviewed in the Superior Courts by proceedings in the nature of applications for the Writs of *Certiorari*, *Mandamus*, or *Prohibition*. The Superior Courts, have a general superintendence over all inferior Courts, to see that their functions are restrained within, or are fulfilled according to, the laws and stated rules by which their subordinate jurisdiction is confined and circumscribed; and they may, under their common law or statutory powers, restrain or regulate the jurisdiction of such inferior Courts. *Certiorari*: The writ of *certiorari* lies to remove from the lower Courts, which are created and regulated by statute merely, their proceedings for the purposes of revision; and to complete the proceedings when the lower Court refuses to do so upon erroneous grounds. It does not lie to enable a Superior Court to revise a decision upon matters of fact; nor matters resting in the discretion of the Judge of the

Certifying
lists and
transmission
to Clerk of
the Crown
in Chancery.

37. After the lists in the several polling districts in an electoral district have been so completed, revised and corrected, they shall be certified in the form C contained in the schedule to this Act by the Revising Officer, and kept by him for the purposes of this Act; and a duplicate of

inferior Court; nor where the errors complained of are formal merely, and not substantial. It is granted or refused in the discretion of the Superior Court: 1 *Bouvier's Law Dict.* 295. Where a Court in its nature is a Court of Record, a *certiorari* will lie to it from the Queen's Bench, by reason of the great superiority of that Court, which may command the inferior Court to send the proceedings before it, up thither, that it may be seen whether it confines itself to its jurisdiction, which, if it exceeds, that Court may correct: *Grenville v. College of Physicians*, 12 Mod. 386, s. c., *sub nom.* *Groenvelt v. Burwell*, 1 Ld. Raym. 454. Although an Act may provide that no *certiorari*, or any appeal whatsoever, should be allowed, a *certiorari* may be had where there is an absence of jurisdiction, or where a conviction on its face is defective, but not otherwise: *Re Watts*, 5 Ont. Pr. R. 267. *Certiorari* lies to remove the proceedings of any jurisdiction created by Act of Parliament: *Reg. v. Glamorganshire*, 12 Mod. 403, s. c., 1 Ld. Raym. 580. And to review a by-law of a municipal board regulating the fees to be paid for shop and tavern licenses: *Re Richardson and the Police Commissioners of Toronto*, 38 U. C. Q. B. 621. It also lies to review the legislative acts of Corporations: *State v. Newark*, 1 Dutcher 396. And to insure a fair and impartial trial: *Reg. v. Palmer*, 5 E. & B. 1024. *Mandamus* is a judicial process or remedy, and extends to the control of all inferior tribunals, corporations, and public officers. It is always granted where there is no other specific legal remedy: *Re v. Wyndham*, Cowp. 377. It may be issued against a party for a matter in respect of which he is liable to an action, or to a suit in equity: *Reg. v. Southampton*, 1 B. & S. 5. When a new right has been created by Act of Parliament, the proper method of enforcing it, is by *mandamus* at common law: *Simpson v. Scottish Union, &c., Company*, 1 Hem. & Mil. 618. It lies to admit a Presbyterian dissenting teacher to a meeting house: *Re v. Barker*, 3 Burr. 1265. "It was introduced to prevent disorder from a failure of justice, and defect of police. Therefore it ought to be used upon all occasions where the law has established no specific remedy, and where, in justice and good government, there ought to be one." *Per* Lord Mansfield, C. J., *Ibid.* Where an act is required to be done for the public good, and there has been a wrongful omission to do it, and a serious inconvenience will arise from its not being done, a Superior Court of law has the power of ordering it to be done, under the prerogative writ of *mandamus*: *Per* Lord Campbell, C. J., in *Reg. v. Mayor of Rochester*, 7 E. & B. 924. The Court will grant a *mandamus* to a County Judge, directing him to inquire into and decide under the Ontario Voters' List Act, whether the name of a voter is improperly omitted from the Voters' List, or whether one person's name should be struck out, and another's inserted in lieu thereof: *Re McCulloch and the Judge of Leeds and Grenville*, 35 U. C. Q. B. 449.

each, certified as aforesaid, shall be transmitted forthwith by him to the Clerk of the Crown in Chancery at Ottawa, who, on receipt of all the said lists for any electoral district, shall, in the then next issue of the *Canada Gazette*, insert a notice in the form H contained in the schedule to this Act,—on and after the publication of which notice in the *Canada Gazette*, the persons whose names are entered on the said lists as voters, shall be held to be duly registered voters in and for such electoral district, subject to correction or amendment by the judgment on appeal

Notice in
Gazette and
its effect.

Though the Judge's decision in regard to the right of the person to vote is, under the statute, final : *Re Parsons and Toms*, 36 U. C. Q. B. 88. But it will not be granted to compel a County Judge to proceed with a recount of election ballots as such, jurisdiction belongs to Parliament : *Re Centre Wellington*, 44 U. C. Q. B. 132. A registering officer may be required by *mandamus* to register the names of voters who are properly entitled to vote : *Davies v. McKeeby*, 5 Nev. 369. *Prohibition* : The writ of prohibition lies to an inferior Court having a limited statutory jurisdiction from which there is no appeal, or writ of error : *Thompson v. Ingham*, 14 Q. B. 710 ; s. c., 14 Jur. 429. It may be issued where, having jurisdiction, the Court has attempted to proceed by rules differing from those which ought to be observed, or where, by the exercise of its jurisdiction, the inferior Court would defeat a legal right. As compared with the remedy by *mandamus* prohibition may be said to be its counterpart ; since *mandamus* is an affirmative remedy, commanding things to be done, while prohibition is negative in its nature, and forbids the doing of things which ought not to be done : *High on Extra. Remedies*, 604. It issues only to prevent the commission of a future act, and not to undo an act already performed : *Ibid.* 606. It does not lie to prevent a subordinate Court from deciding erroneously in a case in which it has a right to adjudicate ; but the party aggrieved may pursue the ordinary remedies for the correction of errors, such as the writ of error or *certiorari* : *Ibid.* 613. Nor does it lie for the transgression of a rule of practice : *Fee v. McIlhargey*, 9 Ont. Pr. R. 329. "It must be fully borne in mind that, in the words of the section, 'the decision of the Judge under this [Voters' List] Act in regard to the right of any person to vote, shall be final as regards such person.' There is no appeal from his decision provided by the statutes. All the Superior Courts can do is to see that the Judge obeys the law. They can prohibit his proceeding if such proceeding be against the law ; and can direct him to proceed to perform any statutable duty imposed on him." *Per Hagarty, C. J., in Re Parsons and Toms and the Voters' List of Goderich*, 36 U. C. Q. B. 91. Prohibition may issue to prevent a County Judge setting aside voters' lists certified by a Judge under a certificate of the municipal clerk, which duly certified the posting in his office, but falsely certified the sending of copies of the lists to the persons named in the statute : *Re L'Original Voters' Lists*, 9 Ont. Pr. R. 425.

Proviso: as to ballots of persons whose right to vote is in appeal.

as hereinafter mentioned: Provided however, that in the event of any such appeal, such lists after the publication of the last mentioned notice in the *Canada Gazette*, shall apply to every election for such electoral district, taking place before such appeal has been disposed of or the result thereof communicated to the Revising Officer; but the ballot of any person whose name has been included in the certified list of voters and is the subject of an undecided appeal, shall be numbered by the deputy returning officer, and a corresponding number shall be placed opposite his name on the poll book; and upon the counting of the ballots, the ballots so numbered shall be, by the deputy returning officer, separated from the ordinary ballots and returned to the proper officer sealed up, at the same time as other ballots, to await the decision of such appeal;—and if under such decision the name of any such person shall be struck from the list of voters, the vote given by such person shall be ascertained from his ballot and shall be struck from the poll upon a recount; and if any person whose name has been excluded from such certified list of voters, and whose exclusion is the subject of an undecided appeal, shall desire to vote, the deputy returning officer shall receive his ballot and shall number the same and the name of the voter in the poll book, and keep separate such ballots as hereinbefore provided; and if, upon such appeal, the decision of the Revising Officer shall be maintained, the vote of such person may be ascertained and struck from the poll upon a recount; (n)—and if an appeal respecting the vote of any person placed on the poll book under the provisions hereof be not decided within the delay fixed by the existing election law for a recount, such delay shall be extended until six days after the decision of the appeal.

Extension of time for recount.

Copies of lists how obtainable.

38. The Revising Officer and the Clerk of the Crown in Chancery shall supply copies of the said lists to any person or persons applying for the same, and paying therefor at

(n) See note p. 145.

the rate payable for copies of lists furnished under section sixteen. (o)

39. After the lists of voters have been so finally revised, or amended and corrected on appeal, and certified and brought into force as hereinbefore prescribed, and until other lists are, in a future year, as herein provided, made, revised, amended and corrected on appeal and certified, and brought into force in their stead, those persons only whose names are entered upon such lists as so revised, amended and corrected, shall be entitled to vote at any election of a member of the House of Commons, in the polling districts and electoral districts for which such lists were respectively made; and the said lists shall be binding on any Judge or other tribunal appointed for the trial of any petition complaining of an undue election or return of a member to serve in the House of Commons. (p)

Effect of revised lists unless altered on appeal or superseded by others.

Binding on Election Courts.

40. The Revising Officer shall also furnish to the returning officer for his electoral district, within forty-eight hours after demand of the returning officer therefor, one copy of the list of voters then in force for each polling district in the electoral district, with a description of the said polling district as contained in the order of the Revising Officer constituting the same, and then in force,—which list and copy of description shall be duly certified by the Revising Officer; (q) and a copy of the said list of voters for each polling district shall be furnished by the returning officer to the deputy returning officer for such polling district; and such list shall be kept by the poll clerk, who shall use the same for the purposes of “*The Dominion Elections Act, 1874.*” (r)

Revising officer to furnish lists to returning officers.

And the order constituting polling districts.

Lists for D. R. O.

(o) See s. 16 on pp. 120-122

(p) See pp. 46 and 146.

(q) This is similar to s. 32 *ante* p. 146.

(r) This direction is not appended to s. 32 *ante*: but it is substantially the same as that contained in s. 23 subs. 2, of the Dominion Elections Act, 1874. See further ss. 31 and 46.

Alteration
of polling
districts on
increase of
voters.

And also
from time
to time.

To publish
order.

New lists
according to
new districts

41. Whenever the number of voters in any polling district, as constituted under section twenty-one, shall increase so as to exceed two hundred, or whenever the Revising Officer then in office considers that the convenience of the voters would be promoted by a new and different sub-division, he shall, before proceeding to make the new lists of voters then next required under this Act, again sub-divide any city, town, ward, parish, township or townships, or other municipal or corresponding division (or any tract of land, where there is no municipal division), in which such polling district is situate, into polling districts, in like manner as hereinbefore provided, so as to conform to the intent and meaning of this Act, and so again from time to time as like occasion shall require, (s) using on all occasions after the first revision thereof, the then last revised and corrected lists of voters for that purpose; (t) and the Revising Officer, after making such sub-division by an order in the form prescribed in section twenty-one, shall publish such order by posting up, in some public place in each polling district, a copy thereof certified by him; and the Revising Officer shall use such amended polling districts in preparing the new lists of voters, which shall be revised and corrected as provided with respect to the polling districts first constituted by him. (u).

GENERAL PROVISIONS.

Revising
officer to
issue sum-

42. The Revising Officer shall, on the application of any person supporting or opposing any objection, claim

(s) This alteration of the polling districts can only be made "before proceeding to make the new lists of voters then next required."

(t) The observance of this direction may lead to inconvenience; for until the preliminary revision has taken place, it may not be possible for the Revising Officer to determine whether "the convenience of the voters would be promoted by a new and different subdivision" of the polling districts.

(u) The new lists are to be of those persons who are qualified to vote within the new polling district divisions. See p. 132.

or proposed amendment to a list of voters at any of the courts or sittings for preliminary or final revision under this Act, issue a summons in the form J in the schedule to this Act contained, to any person to attend at such court or sittings, and, if required, to produce any books or papers in the possession or power of such person, and to give evidence thereat relating to any matter connected with any such revision ; (v) and in the event of such person not attending after being served with such summons, (w) the Revising Officer may punish such person as for a contempt of a Court of Record : (x) Provided, however, that

monies for
witnesses
and docu-
ments.

Punish for
contempt.

(v) This is the only clause empowering the Revising Officer to summon witnesses to give evidence before him. The summons can only issue "on the application of any person supporting or opposing any objection, claim or proposed amendment to a list of voters." Any number of names may be included in the summons. See notes (g) p. 124, and (k) p. 136.

(w) The original writ of subpoena must be shown to the witness at the time of the service, or an attachment will not lie : *Wadsworth v. Marshall*, 3 Tyr. 228. The service must be personal upon the witness, and must be served a reasonable time before the trial. The witness has perhaps a reasonable time after the service has been effected to inspect the subpoena ; 1 Ch. Arch. (10 ed.) 329, 335. Difficulty in serving a subpoena will not dispense with the personal service unless it is sworn that the witness keeps out of the way to avoid personal service : *Barnes v. Williams*, 1 Dowl. P. C. 615. Whether a subpoena has been served in reasonable time is a matter for the Court. Service on a person living close to the place of trial at half-past eleven o'clock in the forenoon for a cause called at two o'clock in the afternoon is not sufficient : *Barber v. Wood*, 2 M. & Rob. 172. Where a person was served at twelve o'clock while standing on the steps of the court house, and was told the trial would come on the same day, which it did at five o'clock, the service was held to be sufficient : *Maunsell v. Ainsworth*, 8 Dowl. P. C. 869. See also note (j) p. 126, *ante*, and Imp. Act. 1878, c. 16, s. 36.

(x) The affidavit for the attachment must distinctly show all that is requisite to bring the party into contempt : *Garden v. Cresswell*, 2 M. & W. 319. It must be made out to the satisfaction of the Court that his non-attendance or neglect to produce the documents was the result of a contemptuous disregard of the process of the Court : *Reg. v. Lord John Russell*, 7 Dowl. P. C. 693. An attachment will not be issued if the copy of the subpoena served varies from the original in any material degree : *Doe dem. Clarke v. Thomson*, 9 Dowl. P. C. 948. In answer to the motion to commit the party may make his excuse : 1 Ch. Arch. (10 ed.) 336. See further *Sinclair's Division Court Acts*, 123, 125 ; and notes (m) 128, (c), p. 158.

Proviso: witness fees to be tendered. Scale of fees. no such person shall be compelled to attend under any such summons unless the witness' fees allowed in the Province of Quebec in the Superior Court, in the Province of Ontario in the Division Court, (y) and in the other Provinces of the Dominion in the County or Division Court, shall have first been paid or tendered to such person. (z)

Revising officer's power of amendment 43. The Judge or Revising Officer shall have power at any court or sitting held under this Act by him, to amend or give leave to amend, (a) when he sees fit, any of the

(y) The witness fees allowed in the Division Court are : Attendance per day in Court, seventy-five cents, and ten cents per mile travelling expenses one way ; but if he travels by railway or other public conveyance, then the ordinary fare, instead of mileage, is to be allowed. See *Sinclair's Division Court Acts*, 279.

(z) An attachment against a witness will not be granted when the conduct money has not been paid or tendered : *Newton v. Harland*, 1 M. & Gr. 956.

(a) The legislative directions as to amendments in the Supreme Court of Canada are contained in 43 Vic. c. 34 (D.), and provide that upon the application of any of the parties, or without any such application, the Court may make all such amendments as may be necessary for the purpose of determining the appeals, or the real question in controversy between the parties ; and whether the necessity for the amendment is or is not occasioned by the defect, error, act, default, or neglect of the party applying to amend. *Ontario* : A similar provision is contained in R. S. O. c. 49, s. 8 ; c. 50, s. 270 ; and is applicable to the Court of Appeal by R. S. O. c. 38, s. 22. See *Gilleland v. Wadsworth*, 1 App. R. 82 ; *McManus v. McManus*, 24 Gr. 118. And by the Ont. Jud. Act, 1881, r. 178, the Court may allow either party such amendments as may be necessary for determining the real questions in controversy between them. *Quebec* : The Court may allow any pleading to be amended so as to agree with the facts proved, if the other party has not been led into error as to the real nature of the facts intended to be alleged and proved : *Code Civil Proced. L. C.*, s. 320. *Nova Scotia* : By R. S. N. S. c. 94, s. 191, the Court may amend all defects and errors in any proceedings in civil cases, whether the defect or error be that of the party or not. And by the N. S. Jud. Act, 1884, r. 183, technical objections are not allowed ; and by r. 280 the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings, as may be necessary for determining the real questions in controversy between the parties. *New Brunswick* : O. S. N. B. c. 37, ss. 161-163. The Court, instead of amending, may direct the jury to find the facts " according to the evidence ;" and if the variance on the record is immaterial, may " give

proceedings taken in reference to any list of voters, (b)

judgment according to the very right and justice of the case." *Manitoba*: C. S. M. c. 34, ss. 230-232. No proceeding is to be vitiated for want of, or defect in, form; but all defects in form may, at any time when discovered, be corrected. In addition to the cases in notes (o) and (p) pp. 116, 117, *ante*, the following, though decisions on the power of the Revising Barrister to amend the lists, may be cited as illustrating the Revising Officer's power to amend incorrect or irregular notices: Where a voter's qualification was not sufficient for identification: *Held*, amendable: *Howitt v. Stephens*, 5 C. B. N. S. 30. Where the description was "dwelling house," instead of "house:" *Held*, amendable by striking out "dwelling:" *Townsend v. Marylebone*, L. R. 7 C. P. 143. Where an occupier claimed a qualification for a "house:" *Held*, amendable by adding "occupier of:" *Ford v. Boon*, *Ibid.* 150. Where the description describes that which may or may not be a qualification, the Court will not be astute to give it the latter effect: *Sherwin v. Whyman*, L. R. 9 C. P. 243. Where it is a misdescription, it is not amendable: *Nicholls v. Bulwer*, L. R. 6 C. P. 281. "With regard to the power of amendment, I am much indisposed to construe it so as to encourage laxity; but I think it would make it almost nugatory to hold that the Revising Barrister had not power to amend or correct mistakes. I am well aware of the strong feelings which are excited in matters of this sort. Unless kept under proper restraint, the agents on both sides will be apt to fall into a degree of laxity which I for one do not feel inclined to encourage:" *Per* Lord Coleridge, C. J., in *Bollen v. Southall*, 15 Q. B. D. 466. The intention of the Act of Parliament must have been that the power of amendment should be as large as is consistent with ordinary rules of construction, and as is consistent with a rule which I ventured to enunciate, namely,—that the balance is to be held fairly between an objector and a person claiming to vote: *Per* Lord Esher, M. R., in *Dashwood v. Ayles*, 16 Q. B. D. 298. In cases where the lapse of time will bar the right, the Court will amend: *Cowburn v. Wearing*, 9 Ex. 207; as in the case of a writ of summons so as to prevent a bar of the action by the Statute of Limitations: *Horton v. Stamford*, 3 Tyr. 869; or where the plaintiff's remedy would otherwise be entirely lost: *Partridge v. Wellbank*, 1 M. & W. 316. "My practice has always been to give leave to amend unless satisfied that the party applying was acting *mala fide*; or that by his blunder, he has done some injury to his opponent which could not be compensated for by costs or otherwise:" *Per* Bramwell, L.J., in *Tildesley v. Harper*, 10 Ch. D. 393.

(b) So that by the proper exercise of the jurisdiction here conferred upon the Revising Officer, the right to vote shall be given to all those who are entitled to it under the provisions of this Act. Our laws treat the elective franchise as a sacred trust committed only to that portion of the citizens who come up to the prescribed standards of qualification; and to be exercised by them at the time and place, and in the manner pre-arranged by public law and proclamations; and whilst being so exercised, is to be guarded, down to the instant of its final

or adjournment. to direct notice to be given to other persons, (c) and to adjourn any court or sittings, (d) on the hearing of any

consummation, by magistrates, and officers, and oaths and penalties: *Chase v. Miller*, 41 Penn. St. 403. It must be manifest to every Court in this country that this statute [Imp. Franchise Act 1867] must have been discussed and settled in almost every clause by persons having different views of the most earnest kind; and that the best way for the Court to hold a strictly even balance is to follow as nearly as possible the words used in each clause of every section of the Act: *Per Brett, J.*, in *Cull v. Austin*, L. R. 7 C. P. 235. In construing an Act regulating the franchise, the rule of construction is,—not that whenever a doubt arises as to a voter's right, the Court should decide in favour of the vote; but the rule is,—the intention of the Legislature as appearing in the language used in the Act: *Kearney's Case*, Alc. Reg. Ca. 22. The intention of the Legislature must be ascertained from the words of a statute, and not from any general inferences to be drawn from the nature of the objects dealt with by the statute: *Fordyce v. Bridges*, 1 H. L. Cas. 1, s. c. 11 Jur. 157. The language of a statute taken in its plain ordinary sense, and not its policy, or supposed intention, is the safer guide in construing its enactments: *Philpott v. St. George's Hospital*, 6 H. L. Cas. 338, s. c. 3 Jur. N. S. 1269. It is a most mischievous doctrine to uphold that a remedial statute should in every case be construed liberally; because no standard exists by which the extent of such liberality may be assayed. What one considers liberal, another may consider illiberal, and thus the door would be opened to the most absurd interpretations: 1 *Stephens on Elections* 719.

(c) That is to such other persons as may have rights of franchise which are affected by the proceedings before the Revising Officer, but in respect of which they have had no notice. Where a person is entitled to rights in two different capacities, if he be made a party to an action distinctly in one capacity, he may not be bound as to his rights in another capacity: *Crooks v. Watkins*, 8 Gr. 340. "In all cases where a party is to be affected in person or property, by anything analogous to a judicial proceeding, the Courts, unless shut out from doing so by the most absolute and unequivocal words, invariably apply the sound rule of English law that no man shall be condemned unheard. So far, indeed, has this doctrine been extended that, in cases where a statute has been entirely silent on the subject of notice, the Courts have felt justified in implying it as a condition precedent:" *Per Strong, J.*, in *Nicholls v. Cumming*, 1 S. C. R. 428.

(d) A Revising Barrister at the close of a sitting rose, without adjourning his court to a future day; but afterwards by letter he appointed a day for a further sitting beyond the time allowed by the Act, at which sitting a list of voters was produced, which, on no objections being made, he added to the register. On a scrutiny, all the voters on such list were struck off the poll: *Shaftesbury, Fal. & Fitz.* 374. If there is an irregularity in the proceedings under which the voters have been registered, such irregularity will be in-
vest-

claim or objection or proposed amendment, to a future day; and he shall not be bound by strict rules of evidence, (e) or forms of procedure, (f) but shall hear and determine all matters coming before him, as such Judge or Revising Officer, in a summary manner, and so as in his judgment to do justice to all parties. (g)

Not bound
by strict
rules of evi-
dence so as
to do justice.

tigated: *Cork, K. & O.* 279. The irregular holding of Revising Barristers' Courts has been held to vitiate the votes registered thereat: *Rogers on Elections*, (10th ed.) 541. See further note (m) p. 149 *ante*.

(e) "He shall not be bound by *strict* rules of evidence." It is not easy to give a legal commentary on this expression. It may be contended that the strict rules of evidence, exclude secondary evidence, until a foundation is laid for giving it; hearsay evidence, because the informant of the witness cannot be subjected to the oath, or to cross-examination; evidence contradicting or varying a written instrument; evidence of a writing required by the Statute of Frauds; evidence excluded on grounds of public policy, &c. From what occurred during the discussion on this clause in the House of Commons (*Com. Debs.* (1885) v. 3 2351-2354,) it may be inferred that it was intended to relax the rules excluding *secondary* evidence; and it would therefore have been more accurate to have made the clause read as allowing the Revising Officer to waive the rules of law respecting *primary* evidence. The ordinary rule is that "the best evidence of which the case in its nature is susceptible, must always be produced:" *Taylor on Evidence*, 187. Primary evidence is the best, or it is that kind of proof which, in the eye of the law, affords the greatest certainty of the fact in question. Until it is shown that the production of this evidence is out of the party's power, no other proof of the fact is in general admitted. All evidence falling short of this in its degree is termed secondary: *Ibid*, 357. When inadmissible evidence is received at the trial without objection, the opposite party cannot afterwards object to its having been received: *Ibid*, 1492. In the case of an appeal the Judge is required to hear "*legal* evidence," which would exclude other than primary evidence, unless a proper foundation was laid for such other evidence. See note (u) p. 165, s. 50 *post*.

(f) This is supplementary to the power given to the Revising Officer to amend any of the proceedings taken in reference to any list of voters, and it also relieves him from a strict construction of, or adherence to, the forms given in the Act. But this power can scarcely be construed to authorize a variation of the periods of time for notices or other proceedings prescribed by the Act. It may be noted here that a paragraph in the original Bill authorizing the Revising Officer "to dispense with any notices hereinbefore required to be given," was struck out in committee.

(g) "Justice," as known to the law, and not "substantial justice" as known only to the Judges, is what the Courts are bound to administer: 2

Applicants
may appear
by counsel.

Costs.

44. The parties to any application before any Judge or Revising Officer may appear by agent, solicitor or counsel; and any elector may appear, in person or by agent, (h) at any sitting of the Revising Officer in the electoral district in which he is such elector in support of or in opposition to any claim, objection or application arising before such Revising Officer; and the Revising Officer may award costs (i) to or against any party in the case, which costs shall only be for witnesses' fees and the expenses

Manitoba Law Journal, 115. "We are only entrusted to administer justice within certain limits. We cannot overstep our jurisdiction for the purpose of doing what is called substantial justice;" *Per Maule, J.*, in *Freeman v. Tranah*, 12 C. B. 411. "There is no Court in England which is entrusted with the power of administering justice without restraint of law;" *Ibid.*, 413. I am not conscious of the vulgar desire to elevate myself or the Court of which I may be a member; I will endeavour to be ever valiant in preserving and handing down those powers to do justice, and to maintain truth, which, for the common good, the law has entrusted to the Judges: *Per Willes, J.*, in *Ex parte Fernandez*, 10 C. B. N. S. 56. See also, note (u) p. 141 ante.

(h) The words "the parties to any application," do not give much aid in the construction of the expression "any person," used in ss. 19 and 26; and especially as this clause makes a difference as to the representation of such "parties," and "any elector." See notes (g) p. 124 and (k) p. 136 ante.

(i) Costs are usually given when the case is so clear that the Court does not call upon the other side: *Allen v. House*, 7 M. & Gr. 157; *Passingham v. Pitty*, 17 C. B. 315. But where there is a reasonably fit case for argument, the Court will not give costs: *Croucher v. Browne*, 2 C. B. 97; *Collier v. King*, 11 C. B. N. S. 478. When the decision in appeal is adverse to the claim of franchise the Court will grant or withhold costs according as there was reasonable ground for the claim; but when the decision against a party supports the franchise, costs will be given: *Clark v. St. Mary, Bury St. Edmunds*, 1 C. B. N. S. 23. Parties are not to be discouraged from bringing cases of disqualification under the notice of the proper tribunals by the peril of having to lose the costs necessarily incurred: *Reg. ex rel. Rollo v. Beard*, 3 U. C. Pr. R. 357. The tendency of modern decisions is not to compel a party to pay costs, unless it be shown that he participated in the improper conduct for which the election is set aside: *Reg. ex rel. Davis v. Wilson*, 3 U. C. L. J. 165. A relator having acted in good faith in bringing forward the matter was not amerced in costs, though unsuccessful: *Reg. ex rel. Crozier v. Taylor*, 6 U. C. L. J. 165. By the Imperial Act of 1878, the Revising Barrister may order costs not exceeding 40s., unless where an objection is reasonably made, or unless the objection is withdrawn, or unless

of summoning such witnesses; and the said costs may be levied by order of the Revising Officer, by distress, as under warrant on a conviction under the "*Act respecting the duties of Justices of the Peace, out of Sessions, in relation to Summary Convictions and Orders.*" (j) 32-33 V., c. 31

45. If from any cause the list of voters for any polling district is not made, revised, and corrected at the time when it ought, under section forty, to be sent to the returning officer at any election to be held after the first list of voters for the electoral district in which it lies has been made, revised, and corrected, then the last list of voters, revised and corrected for such polling district, shall be sent to the returning officer, and used at such election. Provision in default of lists for any year.

46. Notwithstanding anything contained in any statute of Canada heretofore enacted, the returning officer for each electoral district, for which lists of voters made under this Act are to be used, shall, forthwith on the receipt of the writ of election, obtain from the Revising Officer for the electoral district or part of a district for which he is returning officer, at least one copy of the list of voters as finally revised and certified by the Revising Officer and then in force, for each of the polling districts in such electoral district, and a copy of the order dividing the electoral district into polling districts, and shall forthwith fix a polling station in and for each of such polling districts in a central and convenient place therein. Returning officer to fix polling stations before election. Obtain lists. And order fixing polling districts.

for some other special reason he otherwise determines (s. 27, sub-s. 3.) The fees for services in Registration Courts are not taxable under the Attorneys' Act: *Re Andrew*, 10 Jur. 1145. See further, note (r) p. 140.

(j) The distress to enforce payment of the costs here authorized, cannot go beyond the power here given, although the forms of warrant on a conviction under the above Act provide for imprisonment in default of distress. As the orders of inferior jurisdictions must accurately comply with the power under which they are made, a neglect of any of the particulars in the statute would vitiate the order for costs: *Rogers on Elections* 165.

As to lists
certified
while an
appeal is
pending.

Correction
when appeal
is decided,
and notice
thereof.

Proviso : If
the decision
is notified
before day of
polling.

Central place
for court of
revision in
cities, &c.

47. If at any time when the Revising Officer is required to furnish or certify any list of voters, whether to a returning officer, deputy returning officer, or to any other officer or person, there is any appeal pending, or in which the decision, if given, has not been notified to the Revising Officer with respect to such list, the Revising Officer shall furnish such list as then last revised and corrected by him, noting thereon the names of all persons who have been retained on the list of voters notwithstanding objection, the names of all persons who have been struck off the list of voters, and of all persons who have applied to be placed on the list of voters and whose applications have been refused, and who have respectively appealed from his decision ; and the list shall serve and avail, according to the provisions of this Act, for the election with reference to which it is furnished ; but whenever any appeal is decided so as to require the correction of the list, and the formal order or judgment has been served upon him, he shall correct the list accordingly, and forthwith notify the Clerk of the Crown in Chancery that he may correct the duplicate list in his hands accordingly, and the said Clerk of the Crown in Chancery shall correct the same accordingly : Provided, that if the decision in appeal, requiring the correction of any list of voters, is notified to the Revising Officer by service of the formal order or otherwise, before the day of polling, an amended copy of the list of voters shall be furnished by the Revising Officer to the returning officer or deputy returning officer before the said day, and shall contain the correction in question, certified as hereinbefore provided, in which case the election shall take place upon such amended list if received in time by the deputy returning officer. (k)

48. For the revision of the first or any subsequent list of voters under this Act, in polling districts of cities, towns or villages, the Revising Officer, instead of holding a

(k) This provision is only applicable when the Revising Officer is not also a Judge of any Court. See s. 49 and notes to s. 29 *ante*.

court in each polling district, may appoint some central place in such city, town, or village at which to hold his court of revision for the several polling districts therein, appointing, if he thinks proper, a separate day and holding a separate court for each polling district. (l) Separate days.

APPEAL.

49. In any case where the Revising Officer is not also a Judge of any court, any person or persons who, under the foregoing sections, shall have made any complaint, objection or application, in respect of the list of voters in any polling district, whether such list be the first or any subsequent list of voters, prepared under this Act for such polling district, or any person or persons with reference to whom such complaint, objection or application shall have been made, who shall be dissatisfied with the decision of the Revising Officer in respect thereof, (m) may give to the said Revising Officer or his clerk, on the day of such decision or within seven days thereafter, (n) notice in writing of his intention to appeal from such decision, (o) stating Appeal from decision of Revising Officer.
Notice thereof.

(l) The form of notice G, for the final revision of the voters' lists, indicates that the "central place," must be "in the electoral district." See note (f) p. 136, ante.

(m) By the Imperial Act of 1843, electors had a right of appeal from the Revising Barrister to the Court of Common Pleas, either by one appeal or a number of appeals consolidated, or by a special case to be stated by the Revising Barrister. Under the Imperial Judicature Acts 1873 and 1884, and rules of 1883, appeals from the Revising Barristers are now heard before the Queen's Bench Division of the High Court of Justice. See notes on pp. 124, 136, and 160.

(n) Where neither the statement nor the notice had been transmitted to the proper officer of the Court within the time limited by the statute, the Court refused to allow the appeal to be entered, although consented to by the respondent : *Autey v. Topham*, 5 M. & Gr. 1. Nor is it an excuse when the omission was accidental : *Simpson v. Wilkinson*, 5 M. & Gr. 3, n. The Court has no power to entertain the appeal where the statement was signed after the statutable time : *Agnew v. Fowler*, 1 Ir. C. L. R. 462. As to the computation of time, see notes (y) p. 53, and (i) p. 125.

(o) Under the Imperial Act it has been held that the notice of appeal must be signed by the appellant himself ; the signature of an agent will not suffice :

shortly in such notice the decision complained of, and at least one reason for appealing against it, (p) and shall, within the same time, cause a copy of such notice to be served upon the party in whose favor such decision was given, either personally or by leaving it at his residence or place of business, or by mailing the same in a registered letter addressed to his last known post office address; (q) and the Revising Officer shall forthwith transmit such notice, together with a copy of his own decision, to the Judge to be appealed to as hereinafter provided, and shall sign the same as Revising Officer, (r) and shall deliver to such appellant or his counsel or agent, and to the respondent or his counsel or agent, if required, a certified copy of such decision.

To be served personally or by post.

Transmission of notice and copy of decision to Judge.

Appellant to have copy of decision.

Judge to appoint time and place

50. The Judge appealed to shall thereupon appoint a convenient time and place for the hearing of the appeal,

Petherbridge v. Ash, 4 C. B. 74. A notice of claim need not be signed by claimant personally: *Boon's Case*, 3 Ir. C. L. R. 189. The notices of complaint under the Ontario Voters' List Act R. S. O. c. 9, s. 9, must be subscribed in fact by the complainant, or by his agent; the name at the heading of the notice is not a sufficient signature: *Re Simpson and the Judge of Lanark*, 9 Ont. Pr. R. 358. A respondent by appearing waives any objection to the notice: *Rawlins v. West Derby*, 2 C. B. 72. Unless he appears for the purpose of objecting to the want of service of the proper notice: *Reg. v. Cornwall Court of Revision*, 25 U. C. Q. B. 286. See further, note (l) p. 127, and note (a) to form D, p. 176.

(p) The practice in England is not to allow any objections to be taken upon the argument of the appeal which had not been raised before the Revising Barrister: *Simpson v. Wilkinson*, 7 M. & Gr 50. The provision in this Act requiring "at least one reason for appealing," would seem to indicate that the appellant may take any number of reasons before the Judge.

(q) See note (n) p. 129. The party appealing has seven days within which to serve his notices upon (1) the Revising Officer or his clerk; and (2) the party in whose favour the decision was given.

(r) Under a similar direction in the Imperial Act, it was for some time doubted whether such a direction was imperative or directory. Finally it appears to have been decided that when the direction to the Revising Barrister is taken by itself, it is directory: *Sherwin v. Whyman*, L. R. 6 C. P. 243. If the statement is not sufficient to enable the Court to give judgment in law, it may remit the case to the Revising Barrister, in order that it may be more fully stated: *Pitts v. Smedley*, 7 M. & Gr. 85.

which place shall be within the municipality, parish or other local territorial division within which the polling district in which the appeal arises is situate, of which time and place due notice shall be given to the Revising Officer and to the parties interested, in such manner as the judge shall order. (s) And if, at the time and place so appointed, the appellant does not appear in person or by agent, or, appearing, withdraws his appeal, the appeal shall be dismissed; (t) but if the appellant appears, and neither the Revising Officer nor any other party does so, or, so appearing, does not oppose the appeal, the Judge, on sufficient proof or admission of service of the notice in manner above mentioned, shall maintain the same, except in the case of an appeal by a person struck off the list of voters, or whose name the Revising Officer has refused to place thereon, in which cases the Judge shall require satisfactory evidence of the right of the appellant to be placed on the list of voters before he shall maintain the appeal. (u) But if the appeal be opposed by the Revising Officer or other party, if any, then appearing, or if the respondent makes default in so appearing, the Judge, on being satisfied of the service of such notice in manner above mentioned, shall, either immediately or at such time as he shall then fix for the purpose, and at the same place, proceed to hear and decide upon the said appeal summarily, hearing the parties and receiving such legal evidence (u) as shall be adduced before him respecting

for hearing
appeal.

Notice to
parties.

If appellant
does not
appear.

If appeal is
unopposed.

If party
claims
franchise.

Hearing and
decision if
the case is
contested.

(s) Two weeks' notice is prescribed by s. 26, and one week by s. 19. See also note (j) p. 126.

(t) See note (r), p. 140, *ante*. Where the respondent appears, but the appellant does not, the Court (under s. 70 of the Act of 1843) will affirm the decision of the Revising Barrister with costs: *White v. Pring*, 8 C. B. 13.

(u) In these two classes of appeals, the presumption is that the decision of the Revising Officer was right, and that the parties have not the right to vote.

(u) "Legal evidence." This conflicts with the provision in s. 43, which provides that the Judge or Revising Officer, on the hearing of claims, "shall not be bound by *strict rules* of evidence." The general rule of construction

No further
appeal.

Any elector
may appear
in person or
by agent.

the facts in dispute, but without being bound by any technical rules of procedure ; and such decision shall be subject to no further appeal ; (v) and if any judgment be rendered in appeal which shall require an alteration in the certified list, such judgment shall be forthwith notified, in such manner as the Judge shall order, to the Revising Officer : (w) Provided always, that any elector may appear in person or by agent at any sitting of the Judge in appeal in the electoral district in which he is such elector, in support of or in opposition to any claim, objection or application arising before such judge. (x)

when two statutes give powers to different public bodies which cannot, consistently with the object of the Legislature, co-exist, the earlier must necessarily be held to be repealed by the latter statute : *Daw v. Metropolitan Board of Works*, 12 C. B. N. S. 161. Whenever two parts of a statute are contradictory, the Court endeavours to give a distinct interpretation to each of them by looking at the context : *Per Romilly, M. R.*, in *Pretty v. Solly*, 26 Beav. 610. It is a sound principle in the exposition of statutes that less regard is to be paid to the words used, than to the policy which dictated the Act : *Broom's Legal Maxims*, (6 ed.) 539. Also if any section be intricate, obscure or doubtful, the proper mode of discovering its true meaning is by comparing it with the other sections, and finding out the sense of one clause by the words or obvious intent of another : *Ibid.* 540. See also notes to s. 43.

(v) See as to the right to review the summary jurisdiction conferred by this Act, note (m) p. 149 *ante*.

(w) The Revising Officer then corrects the lists according to the judgment, and notifies the Clerk of the Court of Chancery, who is then to correct the lists in his office (s. 47).

(x) A party may appear as his own advocate, and be a witness in the cause as well : *Cobbett v. Hudson*, 1 E. & B. 11. "It is not only contrary to good taste and good feeling, but as it must be revolting to the minds of a jury, it will generally be injurious to those who attempt it : " *Per Lord Campbell, C. J.*, *Ibid.* A barrister can act as counsel at the trial, and be also a witness in the cause : *Davis v. Canada Farmers Mutual Insurance Co.*, 39 U. C. Q. B. 452. "Counsel cannot be unbiassed witnesses, and, if permitted, there would not only be the revolting indecency of the proceeding, but the possible difficulty of the jury being able to distinguish between what the counsel said as an advocate, and what he said as a witness : " *Per Harrison, C. J.*, *Ibid.* "It is an indecent proceeding : " *Per Ritchie, C. J.* in *Bank of B. N. A. v. McIlroy*, 2 Pugs. N. B. 462. At the trial of Sir Thomas More (1 How. S^c. Tr. 386), "Mr. Solicitor, to his eternal disgrace, and to the

51. For the purposes of any such appeal and in respect thereof, the Judge shall have all the powers conferred upon the Revising Officer by section forty-two of this Act, with regard to summoning witnesses, obtaining evidence, and punishing the persons summoned before him. (y)

Powers of
Judge as to
witnesses.

Punishing
contempt.

52. The Judge in appeal may award costs to or against any party in the case,—which costs shall only be for witnesses' fees and the expenses of summoning such witnesses; and the said costs may be levied by order of the Judge, by distress, as under a warrant on a conviction under the "*Act respecting the duties of Justices of the Peace out of Sessions, in relation to Summary Convictions and Orders.*" (z)

Costs; how
levied.

32-33 V., c. 31.

53. The appeal shall be—

Courts for
appeal:

(a.) In the Province of Ontario, to the Judge of the County Court in whose county the polling district where the appeal arises is situate;

In Ontario.

(b.) In the Province of Quebec, to the Judge of the Superior Court resident in or having judicial charge of the judicial district containing the polling district in which the appeal arises;

In Quebec.

(c.) In the Provinces of Nova Scotia, New Brunswick, Manitoba and Prince Edward Island, to the Judge of the County Court;

In N.S., N.B.
Man. and
P. E. I.

eternal disgrace of the Court, who permitted such an outrage on decency, left the bar, and presented himself as a witness for the Crown." The prisoner's reply was: "Mr. Rich, I am more sorry for your perjury than for my own peril:" 1 *Campbell's Lives of the Lord Chancellors*, 467.

(y) See pp. 154-156, and note (o) p. 138.

(z) See notes as to costs pp. 140, 160, and 165. Costs will be given if the decision on the appeal is in favor of the vote: *De Bonville v. Arnold*, 1 C. B. N. S. 22. If the Revising Barrister encourages the appeal the practice is not to give costs: *Ford v. Boon*, L. R. 7 C. P. at p. 158.

In British
Columbia.

(d.) In the Province of British Columbia, to the County Court Judge; but in any electoral district which is not included within the jurisdiction of any county judge, to the Supreme Court,—which court shall assign the duty of trying any appeal to some judge of the said court.

OFFICERS AND THEIR DUTIES.

Revising
officer to ap-
point clerk.

54. The Revising Officer shall appoint as his clerk a person residing in the electoral district competent to perform the duties required of him under this Act, and such as shall be by the Revising Officer assigned to him as clerk of the said courts of revision, or otherwise, during the preparation of and revision of the lists of voters; (a) and such clerk shall be subject to removal by the Revising Officer.

Bailiff or con-
stable.

55. The Revising Officer may also appoint for the purpose of serving papers, posting up notices and attending and keeping order at courts of revision and doing such other duties as may be assigned to him by the Revising Officer, a competent person as a bailiff and constable, who

(a) Only such duties as are ministerial can be assigned by the Revising Officer to the clerk. An officer clothed with judicial functions cannot delegate those functions to another, unless he is expressly empowered to do so under specified circumstances. For the ordinary rule is, that although a ministerial officer may appoint a deputy, a Judicial Officer cannot: *Broom's Legal Maxims*, 840. A judicial officer cannot delegate the discharge of his judicial functions to another judicial officer unless expressly empowered so to do: *Re Queen City Refining Company*, 10 Ont. Pr. R. 415; s. p. *Re Joseph Hall Manufacturing Company*, *Ibid*, 485. A magistrate can have no assistant or deputy to execute any part of his commission. The right is personal to himself, and is a trust he cannot delegate to another: *Entick v. Carrington*, 19 How. St. Trials 1063. A clerk of a Court is a ministerial officer and may, in the presence of the Court, or of any person acting under the sanction of the Court, administer oaths; but he cannot do so out of Court. Nor can he by administering oaths not authorized by the statute or by the Court, institute a usage: *United States v. Babcock*, 4 McLean C. Ct. 113. Any such usage, if the taking of the oath may be called a usage, is the usage, of the clerk, and not of the Court; and oaths so taken before such clerk, being extra-judicial, lay no foundation for perjury: *Ibid*.

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shall be subject to the orders of the Revising Officer, and to be removed by him at pleasure. (b)

56. The Revising Officer shall keep at his office in the electoral district a list of the notices of objections, claims and proposed amendments sent in to him under sections nineteen, twenty-six, and thirty-five, which list, as well as the said notices and notices of appeal, shall be open to inspection by any one desiring to inspect the same (c) before the said objections, claims or proposed amendments are disposed of by the Revising Officer.

Revising off-
cer to keep
lists of objec-
tions, &c.

57. The first lists of voters for polling districts to be prepared and brought into force under this Act shall be completed, finally revised and certified and duplicates thereof forwarded to the Clerk of the Crown in Chancery at Ottawa, on or before the first day of August, one thousand eight hundred and eighty-six; and the lists in future years to be revised under this Act shall be so finally revised, certified and duplicates thereof forwarded to the said Clerk of the Crown in Chancery as aforesaid, on or before the first day of August in each year after the year one thousand eight hundred and eighty-six. (d)

Time for
completing
first and sub-
sequent lists
of voters.

(b) By Division Court Rule 100, clerks and bailiffs of Division Courts are not allowed to act as agents for any party during the conduct of a cause in Court, under the penalty of loss of office: *Sinclair's Division Courts Acts*, 260.

(c) This inspection is to be allowed without fee. "It is a well-settled rule of law that every charge upon the subject must be imposed by clear and unambiguous language:" *Dwarris on Statutes*, 646. Acts of Parliament imposing duties upon the public are to be so construed as not to make any instruments liable to them unless manifestly within the intention of the legislature: *Tompkins v. Ashby*, 6 B. & C. 541. The right to inspect may be enforced by *mandamus*: *Harrison v. Williams*, 4 D. & R. 820. The party on such application for a *mandamus* must assign some satisfactory reason for the inspection: *Rex v. Maidstone*, 6 D. & R. 334.

(d) A statute specifying a time within which a public officer is to perform an official act affecting the rights and duties of others, is directory merely, unless the nature of the act to be performed, or the phraseology of the statute is such that the designation of time, must be considered as a limitation of

APPLICATION OF EXISTING ACTS—OFFENCES.

Application
of existing
Acts.

Exception.

Repeal of
inconsistent
provisions.

58. The Acts of the Parliament of Canada in force respecting elections of members to serve in the House of Commons, or controverted elections of such members, or corrupt practices at elections, shall apply to elections and proceedings thereat to which this Act is to apply, in so far as they are not inconsistent with this Act, and except always as to the qualification of voters at such elections and the lists of voters, which shall be those prescribed by this Act, and to which all the provisions of the said Acts which depend on such qualification shall be construed as referring; and all provisions of the said Acts inconsistent with this Act are hereby repealed.

the power of the officer: *People v. Allen*, 6 Wend. 486; *People v. Cook*, 8 N. Y. 67; *Jackson v. Young*, 5 Cowen 269. A statute directing an officer, before whom proceedings were had, to make and file his report within twenty days after the appointment of trustees; and also directing the latter to cause their appointment to be recorded within thirty days, is directory merely, and an omission to comply with these requirements within the prescribed time will not vitiate the proceedings: *Wood v. Chapin*, 13 N. Y. 509. When there is no substantial reason why the thing to be done might as well be done after the time prescribed as before, no presumption that, allowing it to be so done, it may work an injury or wrong, nothing in the Act itself, or in other Acts relating to the same subject matter, indicating that the Legislature did not intend that it should rather be done after the time limited than not be done at all; then the Courts assume that the intent was that if not done within the time prescribed, it might be done afterwards. But when any of these reasons intervene, the limit is established: *State v. McLean*, 9 Wis. 292. The time fixed for the performance of intermediate steps, after jurisdiction has been once acquired, should be regarded as directory only, and an omission to perform one or more of them in time, would not render the whole proceeding abortive: *United Trust Company v. United States Fire Insurance Company*, 18 N. Y. 220. Where owing to the neglect of the Justices, the overseers were not appointed at the time fixed by statute, a mandamus was granted directing their appointment, there being no negative words "and at no other time" in the Act: *Rex v. Sparrow*, 2 Strange 1123. So a mandamus was granted to appoint overseers in an extraparochial place, after the time had expired: *Rex v. Inhabitants of Rufford*, 1 Strange 512. Where a statute directed that the Michaelmas Quarter Sessions should be holden in the week next after the 11th October: *Held*, merely directory, and such sessions may, notwithstanding the enactment, be legally holden at another time: *Rex v. Justices of Leicester*, 7 B. & C. 6. "If there had been negative words declaring that the sessions

59. At any election that may be held in any electoral district before the lists of voters under this Act shall have been finally revised and certified under this Act, the lists of voters for the previous year shall be used : Provided, that in the case of any election before the final revision and publication of the certificate of the first list provided for by this Act, the list of voters that would have been used if this Act had not been passed shall be used at such election.

Lists to be used before final revision.

Proviso: as to first lists.

60. Section fifty-three of "*The Dominion Elections Act, 1874*," shall apply to the case of an elector in whose name another person has voted, provided the elector personated takes the oath in the schedule P to the said Act, *mutatis mutandis*.

37 V., c. 9, s. 53, to apply.

61. Every person who in any oath or affirmation taken or made under this Act, wilfully swears or falsely affirms shall be deemed guilty of wilful and corrupt perjury.

Perjury.

62. Every officer or person who is by law the custodian of any assessment roll, or list of voters, or of any other list or document, which under, the foregoing provisions of this Act, the Revising Officer is required to obtain and use for the purpose of preparing any list of voters, or of

Copies of certain lists to be furnished to Revising Officer.

should be holden at no other time but that specified, we might give that effect to the statute ; but the words used being only affirmative, I think the authority of Lord Hale (Hale's P. C. 50) is sufficient to warrant us in saying that the statute is merely directory, and that we cannot hold that the proceedings at the sessions in question, were all *coram non judice*: *Per* Lord Tenterden, C. J., *Ibid*. "The distinction between directory and imperative statutes has been long known ; an early instance in which it was taken, is the case of *Rex v. Sparrow* (*supra*) as to the time of choosing overseers. I understand the distinction to be that a clause is directory when the provisions contain mere matter of direction and nothing more, but not when they are followed by such words as that anything done contrary to such provisions shall be null and void to all intents : " *Per* Taunton, J., in *Pearce v. Morrice*, 2 A. & E. 96. When a statute is merely directory a thing omitted to be done at the proper time may be allowed afterwards : *Rex v. Loxdale*, 1 Burr. 445.

Penalty for
default.

any duplicate or duly certified copy thereof, shall furnish the same, or a certified copy or copies thereof to the Revising Officer, as by him required; and any such officer or person refusing or omitting to furnish the same to the Revising Officer within a reasonable time, (e) upon being paid or tendered the cost of preparing the same according to the law in force in the Province, shall, for each such refusal or omission, be held to be guilty of a misdemeanor and shall be punishable accordingly.

Penalty for
misfeasance
under this
Act.

63. Every person appointed to any office or position under this Act, or required by this Act to do any matter or thing, shall, for every wilful misfeasance or wilful act of commission or omission contrary to this Act, (f) forfeit

(e) As to what is a "reasonable time" see notes pp. 115 and 126.

(f) In an action against a registration officer (overseer) for a penalty for wilfully inserting the names of certain persons on the list who were not entitled to vote, it is not essential that such officer should have acted from a corrupt motive; it is sufficient if he has disobeyed wilfully the provisions of the Act: *Tarr v. McGahey*, 7 Car. & P. 389. In charging the jury in this case the learned Judge said: "With respect to confusion occurring in the making out of the list, I confess I do not see the slightest occasion for any. It is like a complicated machine, which confuses at a single view, but may not be at all complex in its details. It is true that only three instances are selected out of a long list of names; but there is distinct evidence that the defendant disregarded the notice given to him by the witnesses, that these three persons had no right to vote. It is the duty of the overseer to make out the list; and he may ask such questions as he pleases of the collectors of assessed taxes, to enable him to do so. But if his notice is distinctly drawn to particular names, he has the opportunity of correcting his list at the time; and he is bound to do so. The names were introduced improperly." *Per* Lord Denman, C. J., *Ibid.* The jury found a verdict for the plaintiffs £50. The introduction of the term "wilful" would imply a request; for unless a person has been requested, and has refused to act, I do not clearly see how his neglect could be wilful: *Per* Williams, J., in *King v. Burrell*, 4 Jur. 1111. In an action against municipal officers by an individual who is liable to taxation, for their omission to tax him, whereby he loses his right to vote, it must be shewn that they omitted to tax him wilfully, or with design to deprive him of his vote; or that they had such actual knowledge of his liability to taxation that a wilful omission to tax him may be reasonably inferred: *Griffin v. Rising*, 11 Metc. 339. An information against municipal officers for refusing to put a voter's name on the list should allege that they knew of his right to vote: *State v. Daniels*, 44 N. H. 383.

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to any person so aggrieved, the penal sum of five hundred dollars, or such less sum as the jury or judge, when the case by the law of the Province is triable without a jury, before whom any action to be brought for the recovery of the before mentioned sum may be tried, shall consider just to be paid to such party; and the same shall be recoverable by such party with full costs of suit, by action for debt in any court of competent jurisdiction: Provided always, that nothing herein contained shall be construed to interfere with any other remedy, civil or criminal, against such person.

64. Every person who is an agent within the meaning of "*The Indian Act*, 1880," and who either directly or indirectly, seeks to induce or compel any person who is an Indian or of part Indian blood and qualified to vote only in respect of property forming part of a reserve, as defined by the said Act, to cause his name to be registered as a voter or to vote or refrain from voting at any election of a member of the House of Commons, shall be held to be guilty of a misdemeanor and, if found guilty thereof, shall be punishable by a fine not exceeding two hundred dollars, or by imprisonment for any term not exceeding six months, or by both; and shall not be entitled to hold any office or place of emolument in the appointment of the Governor, or of the Superintendent-General of Indian Affairs, for a period of two years from the date of his conviction.

Proviso: as
to other re-
medies.

Punishment
of persons
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or not to be
registered as
voters.

65. Any wilful offence against this Act, for which no other punishment is provided, shall be a misdemeanor, and punishable as such.

Punishment
of offences.

Mistake of duty and honest intentions will not excuse the offender: *Amy v. Supervisors*, 1 Wall. 136. When an assessor has reasonable notice before he returns his roll, that a change in occupancy has been made, and he omits to make the necessary changes, it may properly be considered that he has wrongfully refused to insert the proper name on the roll: *Per Richards, C. J.*, in *Re McCulloch and the Judge of Leeds and Grenville*, 35 U. C. Q. B. 452. Before the commencement of an action for a penalty against a registration officer who is required to make out burgess lists, no previous notice of action is necessary: *King v. Burrell*, 12 A. & E. 460.

SCHEDULE OF FORMS.

A.

(See s. 13.)

Oath of Office of a Revising Officer.

I, _____ of the _____ of _____, in the County of _____ and Province of _____, the Revising Officer appointed under "*The Electoral Franchise Act*," in and for the Electoral District (or part of the electoral district) of _____ in the Province of _____ do hereby solemnly swear (or affirm) that I will well and faithfully discharge the duties assigned to me by the said Act without favor or partiality; that I will place no name on the list of voters for the said electoral district (or part of the said electoral district) or any of the polling districts thereof, and will strike no name off the same, unless I shall be satisfied that the same should by law be placed on or struck off the same; and that I will in all respects conform to the said Act and the Law to the best of my judgment and ability. So help me God.

Sworn before me, a Judge of the Court of _____, in and for the Province of _____, being a Court of Record, at _____ the _____ of _____ in the County of _____ and Province aforesaid this _____ day of _____ A.D., 188 _____

A.B.
Revising Officer for the Electoral District (or part of the electoral district) of _____

C.D.
A Judge, &c.

C.

(See ss. 16, 29 and 37.)

Revising Officer's Certificate of List of Voters.

I, _____ the undersigned Revising Officer for the electoral district (or part of the electoral district) of _____, in the Province of _____, do hereby certify that the foregoing list consisting of _____ pages, is a true copy of the list of voters for the local municipality, or for the electoral district or part of the electoral district of _____ as originally prepared (or preliminarily revised, as the case may be), or polling district number _____ in the said electoral district before (or after) the final revision thereof, as the case may be, for the year _____, under "*The Electoral Franchise Act*."

Dated

188

A. B.

Revising Officer for the Electoral District (or part of the electoral district) of _____

(Sec s. 15.)

B.
 List of Voters for the Year commencing 1st January, 18 , in the (Electoral District
 or part of the Electoral District of or Polling District No.
 of the Electoral District of .)

No.	Name in full. (Surname first.)	Residence.	P. O. Address.	Nature of Qualifica- tion.	Municipality or Place where Quali- fication is situate, if Real Estate.	Concession, Street and No. of Lot or other par- ticular des- cription of qualifying Property.	Nature of Title to qualify- ing Prop- erty.	Name of Parent if the Voter is quali- fied as a Son of a Farmer or other Ow- ner of Real Proper- ty; also Nature of Parent's Title to the Real Property.	Remarks

Dated

188 .

A. B.,

Revising Officer for the Electoral District (or part of the electoral district) of

D.

(See ss. 17 and 18.)

Notice by Revising Officer of preliminary revision of First List of Voters.

The Revising Officer for the Electoral District (or part of the electoral district) of _____ in the Province of _____, appointed under "The Electoral Franchise Act," hereby gives notice that he has completed and published in the manner directed by the said Act, the first general list of voters for the said Electoral District (or part of the said electoral district), and that he will hold a Sitting pursuant to the said Act for the Preliminary Revision of such list at _____ in the _____ of _____ County of _____, in the said Province, at _____ o'clock in the _____ on the _____ day of _____ 188 . Any person objecting to any name on the said list may at any time before the said day, and any person desiring to add any name thereto, or desiring otherwise to amend the same, may, on or before the _____ day _____ 188 , deliver to the said Revising Officer, or mail to him by registered letter at his office or place of address, a notice in writing in the form for that purpose contained in the schedule to the said Act, as nearly as may be, setting forth the name or names objected to, and the grounds of objection, or the name or names proposed to be added to the list, with the grounds therefor, and particulars of the qualification and residence of the persons whose names are proposed to be added, or the particulars of any other proposed amendment, and the grounds therefor: and every such notice must be signed by the person so giving notice, and must set forth his residence, occupation and post-office address. (a) In the event of the person so giving notice objecting to the name of any person already on the list, the person so objecting must also deliver to or mail to the last known address of the person whose name is objected to, by registered letter, and at the same time as the notice is given to the Revising Officer, a copy of the notice given.

Dated _____, 188 .

A. B.

Revising Officer for the Electoral District (or part of the Electoral District) of _____

E.

(See s. 19.)

Notice of Complaint or Application.

I, _____, of the _____ of _____ in the county of _____, in the electoral district of _____, Province of _____, under "The

(a) This requires more than is directed in the body of the Act as to notices. "It would be quite contrary to the recognized principles upon which Courts of Justice construe Acts of Parliament, to enlarge the conditions of the enactment, and thereby restrain its operation, by a reference to the words of a mere form given for convenience' sake in a schedule, and still more so when that restricted operation is not favorable to the subject, but the reverse:" *Per* Lord Penzance, in *Dean v. Green*, 8 P. D. at p. 39. "If the enacting part and the schedule cannot be made to correspond, the latter must yield to the former:" *Per* Lord Cottenham, L. C., in *Re Baines*, 1 Cr. & Phil. 46. See also note (b) p. 127.

Voters.

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Electoral Franchise Act," hereby give notice that I will apply to have the first general list for the electoral district (or part of the electoral district) of

(or the list for the municipality or polling district No. of the said electoral district) (or the lists for the year as preliminary revised), as the case may be, amended or added to, as the case may be; (then state the name or names objected to, with the grounds therefor; or the name or names desired to be added, with full particulars of their residences, addresses, occupations, qualifications, and if real property, where situated, and the grounds for applying to have them added, or the nature of any other proposed amendments to the list and the grounds therefor), at the sitting to be held by the Revising Officer for the said Electoral District (or part of the said electoral district), at o'clock in the noon, on the day of 188, at in the said electoral district.

Dated 188 .

To the Revising Officer for the said Electoral District (or part of the said Electoral District), (or to the person whose name is objected to.)

(Name of complainant,)

P. O. Address.

F.

(See s. 21.)

Order of Revising Officer dividing Electoral District into Polling Districts.

I, , the Revising Officer for the Electoral District (or part of the electoral district) of , Province of , under "*The Electoral Franchise Act,*" do hereby order and direct that the said Electoral District (or part of the said electoral district) be and the same is hereby sub-divided into polling districts, described as follows:—

Number one.

Bounded on (here fill in as particular a description, by concession, street, or other dividing lines, as possible, of the bounds of each polling district.)
(And so on as to others).

Dated 188 .

A. B.,

Revising Officer for the Electoral District (or part of the electoral district) of

G.

(See s. 24.)

Notice by Revising Officer of Final Revision of Lists of Voters for each Polling District.

The Revising Officer for the Electoral District (or part of the electoral district) of in the Province of , under "*The Electoral Franchise Act,*" hereby gives notice that he will hold a Sitting on the day of 188, at o'clock in the ; at in the of , in the said electoral district, for the Final Revision of the list of voters for polling district No. , of the said electoral district.

All objections and claims for additions to or amendment of the said list, with the grounds therefor, and the name, addition, and post office address of the person objecting to any name on the list, or claiming to add to or amend the list in any other respect, unless the same have already been sent or delivered at the preliminary revision of the said list, must be delivered to the said Revising Officer at _____, or sent to him by registered letter, addressed to him at _____, before the _____ day of _____ 188____, in the same form, as nearly as may be, as of notice of complaint, in the schedule to "*The Electoral Franchise Act.*"

If the objection be to the name of any person already on the list, the person so objecting must, at the same time, deliver or mail by registered letter to the person so objected to, at his last known address, a copy of the notice of objection.

Dated _____ 188____.

A. B.,
Revising Officer for the Electoral District (or part of
the electoral district) of _____

H.

(See ss. 29 and 37.)

*Notice to be published in the Canada Gazette by the Clerk of the Crown
in Chancery.*

Notice is hereby given that I have received the lists of voters finally revised, for all the polling districts of the Electoral District of _____ for the year _____, under "*The Electoral Franchise Act.*"

Dated _____, 188____.

C. D.
Clerk of the Crown in Chancery at Ottawa.

J.

(See s. 42.)

Summons to Witness.

To

You are hereby required and summoned personally to attend before me, the undersigned Revising Officer, on _____ the _____ day of _____, 188____, at _____ o'clock in the _____ at _____ in the County of _____, and Province of _____, and then and there to testify what you may know concerning the _____ then to be investigated by me as such Revising Officer, and so on from day to day, and you shall bring with you the papers herein particularly described, that is to say :

And herein fail not at your peril.

Given under my hand at _____ aforesaid, this _____ day of _____, 188____, under "*The Electoral Franchise Act.*"

A. B.,
Revising Officer for the Electoral District (or part of the
electoral district) of _____

APPENDIX. (a)

ONTARIO PROVINCIAL FRANCHISE.

The Franchise and Representation Act, 1885,

48 VIC. CH. 2, O., AMENDING R. S. O. CH. 10.

1. This Act may be cited and known as *The Franchise and Representation Act, 1885.* (b) Short title.

INTERPRETATION.

2. Section 2 of *The Election Act*, and its sub-sections, are hereby repealed, and the following is substituted instead thereof : R. S. O., c. 10
s. 2, repealed

2. Unless otherwise declared or indicated by the context, where- Interpreta-
tion.
ever any of the following words or expressions occur in this Act, they shall have the meanings hereafter expressed, that is to say :

(1) The word "owner" shall signify and mean proprietor, either Owner.
in his own right or in the right of his wife, of an estate for life, or
any greater estate either legal or equitable.

(2) The word "occupant" shall signify and mean a person *bona Occupant*.
vide occupying property otherwise than as owner or tenant, either in
his own right or in the right of his wife, but being in possession of
such property and enjoying the revenues and profits arising therefrom
to his own use.

(3) The word "tenant" shall include any person who, instead of Tenant.
paying rent in money, is bound to render to the owner any portion
of the produce of such property.

(a) Only the clauses of the several Provincial Acts relating to the
Qualifications of Voters are given in this Appendix.

(b) Notes on the Ontario Franchise Act will appear in a second
edition of the Author's "*Manual on Voters' Lists.*"

Landholder. (4) The expression "landholder" shall mean and include :

Person domiciled on real property as owner. (a) Any person who being the owner of and residing and domiciled upon real property of at least twenty acres in extent, or of at least an actual value in cities and towns of four hundred dollars, and in townships and incorporated villages of two hundred dollars, is, in the last revised assessment roll of the municipality where such property is situate, entered and assessed as owner of said property of at least the number of acres or the assessed value aforesaid, and

Persons domiciled as tenant. (b) Any person actually residing and domiciled in any dwelling house as tenant thereof, where such dwelling house and the land, if any, held therewith by such person as such tenant is of at least an actual value in cities and towns of four hundred dollars, and in townships and incorporated villages of two hundred dollars, and is at not less than such value entered and assessed in the name of such person in the last revised assessment roll of the municipality wherein the same is situate.

Landholder's son. (5) The expression "landholder's son" shall mean and include a son, step-son, grandson, or son-in-law, as the case may be, of any landholder.

Wage-earner (6) The expression "wage-earner" shall mean any person entered in the last revised assessment roll of a city, town, incorporated village, or township, as one having or deriving an annual income or wages of not less than two hundred and fifty dollars, but who is not entered or assessed in said roll for a taxable income of at least two hundred and fifty dollars.

Dwelling-house. (7) The expression "dwelling-house" shall mean and include any part of a house when that part is separately occupied and resided in as a dwelling, and also any land where such land is separately occupied or resided upon as and is part of the premises belonging to and used with such dwelling.

Householder (8) The expression "householder" shall mean any person entered in the revised assessment roll of a city, town, township or incorporated village, as sole tenant or occupant of and actually resident in a dwelling-house situate therein, but shall not mean nor include,

Not a joint occupier; (a) Any person who is so entered or who is actually a joint tenant or occupant of such dwelling-house with any other person ; nor

Nor lodger. (b) Any person who is a mere lodger or boarder in a house.

(9) The expression "local municipality" shall mean and include Local a city, town, incorporated village, or township, as the case may be. Municipality

(10) The word "election" shall mean an election of a member to Election. serve in the Legislative Assembly.

(11) The expression "to vote" shall mean to vote at the election To vote. of a member of the Legislative Assembly.

(12) The expression "electoral district" shall mean any county or Electoral other place or portion of this Province, entitled to return a member district. to the Legislative Assembly.

(13) The expression "voters' list" shall mean the copy of the Voters' list. voters' list furnished in accordance with section 56 of this Act.

(14) The expression "last revised assessment roll" shall mean the Last revised last revised assessment roll of a city, town, incorporated village or assessment roll. township.

QUALIFICATION OF VOTERS.

Who may Vote.

3. Section 7 of *The Election Act*, and its sub-sections, are hereby R. S. O., c. 10, repealed, and the following is substituted therefor:— s. 7, repealed.

7. The following persons, and no others, being males and of the Who may full age of twenty-one years, and subjects of Her Majesty by birth vote at or naturalization, and not being disqualified under the preceding elections. sections, or otherwise by law prevented from voting, shall, if duly entered on the list of voters proper to be used at the election then pending, according to the provisions of *The Voters' Lists Act*, or of R. S. O. c. 9. this Act, be entitled to vote at elections of members to serve in the Legislative Assembly of this Province, that is to say:—

Firstly.—Every male person entered on the revised assessment Real proper roll, upon which the voters' list to be used at the election is based ty qualifica- tion. for any city, town, incorporated village or township, for real property of the value hereinafter mentioned, and being at the time of the final revision and correction of said assessment roll, and also at the time of the election, a resident of and domiciled within the Electoral District for which he claims to vote.

(2) Such person must (subject to the provisions hereinafter con- Value of real tained) have been rated on such assessment roll as the owner, tenant property necessary.

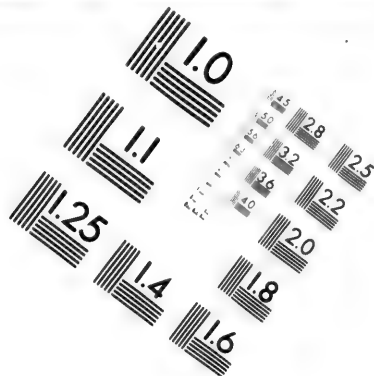
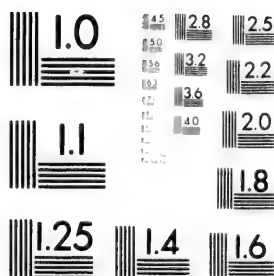
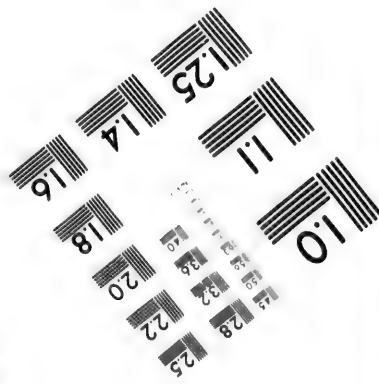
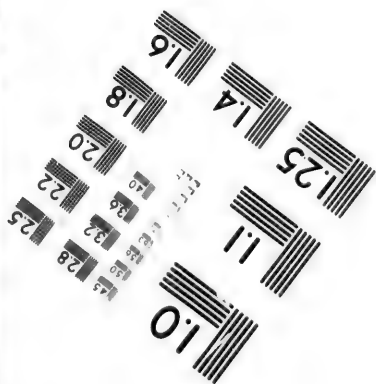


IMAGE EVALUATION TEST TARGET (MT-3)



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(716) 872-4503**

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or occupant of real property of the actual value of not less than the following :—

- Cities and Towns.** In cities and towns, two hundred dollars ;
- Villages and Townships.** In incorporated villages and townships, one hundred dollars ;
- Joint owners** (3) Where any real property is owned or occupied jointly by two or more persons, and is rated at an amount sufficient, if equally divided between them, to give a qualification to each then each of them shall be deemed rated within this Act, otherwise none of them shall be deemed so rated.
- Income franchise.** *Secondly.*—Every male person who is residing at the time of the election in the local municipality in which he tenders his vote and has resided therein continuously since the completion of the last revised assessment roll of the municipality, and derives an income from some trade, occupation, calling, office, or profession of not less than two hundred and fifty dollars annually, and has been assessed for such income in and by the assessment roll of the municipality upon which the voters' list used at the election is based.
- Wages franchise.** *Thirdly.*—Every male person entered on the last revised assessment roll as a wage-earner who is residing at the time of the election in the local municipality in which he tenders his vote, and has resided therein continuously since the completion of the last revised assessment roll of the municipality, and who has during the twelve months next prior to being so entered, derived or earned wages or income from some trade, occupation, calling, office, or profession of not less than two hundred and fifty dollars.
- How wages may be estimated.** (2) In estimating or ascertaining the amount of wages or income so earned or derived by any person so entered as a wage earner in the assessment roll of a municipality, not being a city, town, or village, the fair value of any board or lodging furnished or given to or received or had by such person as or in lieu of wages or as part thereof shall be considered or included.
- Householder** *Fourthly.*—Every male person entered as a householder in the last revised assessment roll of the local municipality in which he tenders his vote, who is residing at the time of the election in the said municipality, and has resided there continuously since the completion of the said last revised assessment roll.

Fifthly.—Every landholder's son who is resident at the time of the election in the local municipality in which he tenders his vote, and has resided therein with and in the residence or dwelling of the landholder whose son he is, for twelve months next prior to the return by the assessor of the assessment roll on which the voters' lists used at the election is based, and who has been duly entered and named in said assessment roll as such landholder's son.

(2) Occasional or temporary absence from such residence or dwelling for a time or times not exceeding in the whole six months of the twelve hereinbefore mentioned, shall not operate to disentitle a landholder's son to vote under this Act.

Sixthly.—Where there is a voters' list, all Indians, or persons with part Indian blood, who have been duly enfranchised, and all Indians or persons with part Indian blood who do not reside among Indians though they participate in the annuities, interest, moneys and rents of a tribe, band or body of Indians, subject to the same qualifications in other respects, and to the same provisions and restrictions as other persons in the electoral district;

(2) But the Indians or persons with part Indian blood who are entitled to vote where there is no voters' list shall be only the following, namely:—"All Indians, or persons with part Indian blood, who have been duly enfranchised, and all unenfranchised Indians or persons with part Indian blood who do not participate in the annuities, interest, moneys, or rents of a tribe, band or body of Indians, and do not reside among Indians, subject to the same qualifications in other respects, and to the same provisions and restrictions, as other persons in the electoral district."

(3) Where there is no voters' list any person alleged by a candidate, or the agent of a candidate, to be an Indian, or person with part Indian blood, shall, if required by such candidate or agent, or by the returning officer, take the following oath or affirmation in addition to any other oath required by a voter under the law:—

"You swear that you do not participate in the annuities, interests, moneys, or rents of any tribe, band or body of Indians, and do not reside among Indians."

Or, at his option, the following:—

"You swear that you are not an Indian, nor a person with part Indian blood."

Voters
where there
is no assess-
ment roll.

Seventhly.—In such of the municipalities, townships, and places in the Electoral Districts of Algoma East, and Algoma West, East Victoria, East Peterborough, North Hastings, North Renfrew, South Renfrew, Muskoka, and Parry Sound as have no assessment roll, and subject to the provisions hereinafter contained, every male person of the full age of twenty-one years, being a subject of Her Majesty by birth or naturalization, and being not otherwise disqualified, who is at the time of the election a resident of and domiciled within the Electoral District for which he claims to vote, and is actually and *bona fide* owner of real estate in such electoral district of the value of two hundred dollars or upwards, or who is at the time of the election a resident householder of such place, and has been such owner or householder for the six months next preceding the election.

Meaning of
"owner."

(2) A person is not an owner within the meaning of the said provision designated seventhly, where the land of which he claims to be owner has never been granted or patented by the Crown; and a person who is a mere lodger or boarder in a house is not a "resident householder" in respect of such house.

Lodger or
boarder.

Residence
required.

(3) In any part of the Electoral District of Algoma West, Algoma East, Muskoka, or Parry Sound, in which there is no assessment roll or voters' list, residence by an owner shall be necessary for the same period as residence by a householder, in order to qualify a voter.

Voters in
unorganized
territory.

Eighthly.—No person shall be entitled to vote in unorganized territory on property which is wholly or partly in an organized municipality.

Voters in
Algoma.

9. (1) In such of the municipalities, townships, and places in the Electoral Districts of Algoma West and Algoma East as have no assessment roll, the only persons entitled to vote at elections of members to serve in the Legislative Assembly of this Province, shall be every male person of the full age of twenty-one years, being a subject of Her Majesty by birth or naturalization, and being not otherwise disqualified, who is at the time of the election a resident of and domiciled within the Electoral District for which he claims to vote, and who is actually and *bona fide* the owner of real estate in such electoral district of the value of two hundred dollars or upwards,

er who is, at the time of the election, a resident householder of such place, and has been such owner or householder for the six months next preceding the election.

(2) A person is not an owner within the meaning of this section, ^{Meaning of "owner."} where the land of which he claims to be owner has never been granted or patented by the Crown; and a person who is a mere lodger or ^{Lodger or boarder.} boarder in a house is not a "resident householder" in respect of such house.

(3) In any part of the said Electoral Districts in which there is no ^{Residence required.} assessment roll or voters' list, residence by an owner shall be necessary for the same period as residence by a householder, in order to qualify as a voter.

(4) No person shall be entitled to vote in unorganized territory, ^{Voters in unorganized territory.} in either of the said Electoral Districts, on property which is wholly or partly in an organized municipality.

The Election Act of Ontario.

R. S. O. CH. 10 (1877.)

Who shall not Vote.

4. The Chief Justice and the Justices of the Court of Appeal, the ^{Judges and Officers disqualified from voting.} Chancellor and Vice-Chancellors of Ontario, the Chief Justices and Judges of the Courts of Queen's Bench and Common Pleas in Ontario, all County Judges, all Officers of the Customs of the Dominion of Canada, all Clerks of the Peace, County Attorneys, Registrars, Sheriffs, Deputy Sheriffs, Deputy Clerks of the Crown, and Agents for the sale of Crown Lands, all Postmasters in Cities and Towns [all Stipendiary Magistrates, (a)] and all Officers employed ^{48 Vic., c. 2, s. 10.} in the collection of any duties payable to Her Majesty in the nature of duties of excise, shall be disqualified and incompetent to vote at any election; and if any public officer or person mentioned in this ^{Penalty} section votes at any such election, he shall thereby forfeit the sum of two thousand dollars, and his vote at such election shall be null and void. 32 V. c. 21, s. 2; 39 V. c. 10, s. 42.

(a) The amendment by 48 Vic. c. 2, s. 10, is as follows: "10. Section four of *The Election Act* is hereby amended by adding after the words 'all postmasters in cities and towns,' the words, 'all Stipendiary Magistrates.'" The titles of the Courts above named were altered by the Ontario Judicature Act, 1881.

Election officers and persons not to vote.

5. No Returning Officer or Election Clerk, and no person who, at any time, either during the election or before the election, is or has been employed at the said election or in reference thereto, or for the purpose of forwarding the same by any candidate or by any person whomsoever, as counsel, agent, attorney or clerk, at any polling place at any such election, or in any other capacity whatever, and who has received or expects to receive, either before, during or after the said election, from any candidate or from any person whomsoever, for acting in any such capacity as aforesaid, any sum of money, fee, office, place of employment, or any promise, pledge or security whatever therefor, shall be entitled to vote at any election. 32 V. c. 21, s. 3 ; 38 V. c. 3, s. 27.

Not to apply to D. R. Os. or Poll Clerks.

2. The preceeding provision shall not apply to Deputy-Returning Officers and Poll Clerks appointed under this Act and receiving as such the fees to which such officers are entitled under this Act. 38 V. c. 3, s. 27.

No woman to vote.

6. No woman shall be entitled to vote at any election. 38 V. c. 21, s. 4.

QUEBEC PROVINCIAL FRANCHISE.

The Quebec Election Act, 1875,

38 VIC. CH. 7, AMENDED BY 39 VIC. CH. 13, Q.

PRELIMINARY.

1. This act shall be known and may be referred to and cited as Title.
"The Quebec Election Act."

It shall apply to every election of a member of the Legislative Application.
Assembly, whether the same be held at the time of a general election,
or to fill a vacancy.

2. In interpreting this act, unless it be otherwise provided, or ^{Interpreta-}
unless there be in the context of its provisions something which ^{tion.}
indicates a different sense, or requires another interpretation :

1. The word "municipality" means every municipality of a parish Municipality
or part of a parish, of a township or part of a township, of united
townships, of a village, of a town, existing under the operation of
the municipal code, and every town or city municipality, incorporated
by charter or special act ;

3. The word "owner" signifies any one who possesses real estate, ^{Owner.}
or whose wife possesses real estate, whether as owner or usufructuary.
Whenever one person has the mere ownership of real estate, and
another has the enjoyment and usufruct thereof to his own use and
benefit, the person who has the mere ownership of such real estate
shall not be entitled to vote as owner thereof, and the usufructuary
shall in such case alone have the right to vote, by reason of such real
estate ;

- Occupant.** 4. (*Amended by 39 Vic. c. 13, s. 1*) The word "occupant" signifies the person who occupies immovable property, otherwise than as owner, tenant, or usufructuary, either in his own right or in the right of his wife, [and who derives the revenue therefrom (a)];
- Tenant.** 5. The word "tenant," means as well the person who pays rent in money, as the person who is obliged to give to the owner a certain part of the revenues and profits of the real estate which he occupies; and such tenant must be *tenant feu et lieu*, save in the case of the lessee of a shop, work-shop, or office;
- To vote.** 8. The words "to vote," means to vote at the election of a member of the legislative assembly of this province;
- Electoral District.** 9. The expression "electoral district," means any county or other place or portion of this province, entitled to return a member of the Legislative Assembly;

PARLIAMENTARY ELECTORS. (b)

1.—*Conditions requisite to be an Elector.*

- Persons entered on the list of electors.** 7. No person shall be entitled to vote at the election of a member of the Legislative Assembly of this Province, unless at the time of voting, he be an elector entered as owner, tenant, or occupant, upon the list of electors in force.
- Qualification of electors.** 8. No person shall be entered upon the list of electors, unless he fulfils the following conditions;
- Age.** 1. He must be of the male sex, of full age, and a subject of Her Majesty by birth or naturalization;
- Allegiance.** 2. He must not be otherwise legally incapacitated;
- Not incapacitated.** 3. He must be actually and in good faith owner or occupant of real estate, estimated, according to the valuation roll in force, as revised, if it has been revised even for local purposes only, at a sum of at least three hundred dollars in real value, in any city municipal.
- Owner or occupant of real estate.**

(a) The amendment by 39 Vic. ch. 13, s. 1, is as follows:

1. Subsection 4 of section 2 of "The Quebec Election Act" is amended by adding at the end thereof the words, "and who derives the revenue therefrom."

(b) *I. e.* for the Legislative Assembly of Quebec: 40 Vic. c. 27, s. 1

pality entitled to return one or more members of the Legislative Assembly, and two hundred dollars in real value, or twenty dollars in annual value, in any other municipality, or

Be a tenant in good faith, paying an annual rent for real estate, of at least thirty dollars in any city municipality entitled to return one or more members of the Legislative Assembly, and of at least twenty dollars in any other municipality; provided that such real estate be estimated according to such valuation roll, in real value at, at least three hundred dollars in any city municipality entitled to return one or more members of the Legislative Assembly, and two hundred dollars in any other municipality.

9. Whenever two or more persons are co-owners, co-partners in the property or possession, co-tenants or co-occupants of any real estate valued at an amount sufficient for the share of each to confer upon him the electoral suffrage, each of such persons shall be deemed to be an elector in conformity with this Act, and entered upon the list of electors. He whose share does not amount to the value required for the electoral suffrage shall not be so entered, nor be an elector.

The same rule applies to co-tenants, respecting the amount of rent which they pay.

10. Nevertheless if the real estate is owned or occupied by a corporation, no one of the members of the corporation shall be an elector nor entered upon the list of electors, by reason of such real estate.

2.—Persons who can neither be Electors nor Voters.

11. The following persons can, in no case, be electors or vote :

1. The Judges of the Court of Queen's Bench and of the Superior Court, the Judge of the Vice-Admiralty Court, the Judges of the Sessions, District Magistrates, Records.
2. Officers of the Customs, Clerks of the Crown, Clerks of the Peace, Registrars, Sheriffs, Deputy-sheriffs, Deputy-clerks of the Crown, and officers and men of the Provincial or Municipal Police force.

3. Agents for the sale of Crown lands, Postmasters in cities and towns, and all officers employed in the collection of any duties payable to Her Majesty, in the nature of duties of excise, including collectors as well of Federal as of Local revenue.

NOVA SCOTIA PROVINCIAL FRANCHISE.

The Franchise Act, 1885,

48 VIC. CH. 2, N. S.

Who entitled
to vote.

1. The following persons, if of the full age of twenty-one years and subjects of Her Majesty by birth or naturalization, and not disqualified by any section of this Act, or otherwise by law prevented from voting, shall be entitled to have their names entered upon the list of electors provided for by the thirteenth section of chapter four of the Revised Statutes, fifth series, and if so entered shall be entitled to vote at elections of members to serve in the House of Assembly, that is to say :—

Male persons
assessed for
real or per-
sonal prop-
erty.

(a.) Every male person who, at the time of the last assessment, shall have been assessed in respect of real property to the value of one hundred and fifty dollars, or in respect of personal property, or of personal and real property together, to the value of three hundred dollars.

Or—
in posses-
sion of real
or personal
property.

(b.) Every male person who, at the time of the last assessment, shall have been in possession of real or personal property, or of personal and real property together, of the respective values mentioned in the preceding sub-section, and shall have been by law specially exempted from taxation.

Or—
tenants of
real prop-
erty.

(c.) Every male person who, at the time of the last assessment, shall have been a *bona fide* yearly tenant of real property of the value of one hundred and fifty dollars, where the assessment on real property was by law levied upon the owners thereof, or the assessed value of whose personal property, combined with that of the real property so occupied by him as a yearly tenant, shall have been three hundred dollars or upwards.

Or—
sons of
such quali-
fied persons.

(d.) The son of every person qualified under the preceding sub-sections, if such person at the time of the last assessment shall have

been in possession as owner or yearly tenant of sufficient property to qualify more than one voter, and if such son shall have resided in the residence or dwelling of his father, or on property owned by his father within the assessment district, for at least one year next prior to said assessment.

(e.) The son of every widow if such widow, at the time of the last assessment, shall have been in possession, as owner or yearly tenant, of sufficient property to give a qualification to vote, if such son shall have resided in the residence or dwelling of his mother, or on property owned by his mother within the assessment district, for at least one year next prior to said assessment.

Or—
son of widow who is owner or tenant of real property.

(f.) Every person who, at the time of the last assessment, shall have been entitled to be assessed as in sub-section (a) mentioned, or shall have been qualified under any of the preceding sub-sections, and whose names shall have been omitted from the assessors' returns.

Or—
persons entitled to be assessed.

2. If in either of the cases mentioned in sub-sections (d) and (e) of the first section of this Act, there are more sons than one so resident, and if the property is not of sufficient value if divided between them to give a qualification to vote to the father and all the sons, where the father is living, or to the sons alone where the mother is a widow, then the right to vote under this Act shall belong to and be the right only of the father and such of the eldest or elder of said sons to whom the value of the property will when divided between them give the qualification to vote; and if the property is not of sufficient value if divided between the father (if living) and one son, to give each a qualification to vote, then the father shall be the only person entitled to vote in respect of such property.

Where more than one resident son.

3. Occasional or temporary absence of the son from the residence or property of the father or mother for not more in all than four months in the year, shall not disqualify such son as a voter under this Act. The time spent by mariners and fishermen in the prosecution of their occupation, and by students at institutions of learning within the Dominion of Canada, shall be considered time spent at home.

Occasional absence not to disqualify.

4. [Relates to the duty of Assessors.]

Cases of business partners, &c.

5. Whenever two or more persons are either as business partners, joint tenants, tenants in common, or by any other kind of joint interest, the owners or yearly tenants of any real property, or the joint owners of any personal property, or of real and personal property together, the names of each of such persons shall be entered in the Assessors' returns and the property apportioned among them to the best of the Assessors' judgment, and such apportionment shall have the same force and effect respecting the qualifications of voters as if each of such persons had been individually assessed in the amount set opposite their respective names; but where property is held by a body corporate, no one of the members thereof shall be entitled to vote, or be entered on the list of voters in respect of said property.

Elector's number and residence.

6. The assessors shall mark on their returns opposite each name the number of the polling district in which the property of the elector is situate, and the residence of such elector.

Voters to be placed on lists and vote where qualified.

7. Persons qualified under this Act as voters in respect of personal property or as sons, shall only be placed upon the list as voters and vote in the polling district in which they reside, and persons qualified as voters in respect of real property, or of real and personal property together, shall only be placed on the Voters' List and vote in the polling district where the real property in respect of which they are qualified is situate; but when the real property is partly within one polling district and partly within another, although all within one electoral district, the person qualified in respect thereof shall be entitled to be placed upon the list of voters and to vote in either of such polling districts for which he may at the time of the revision of the lists desire to be registered as a voter.

12. This Act may be cited as "The Franchise Act 1885."

Paupers to be struck out of list.

16. The revisors, when correcting the List, shall strike therefrom the name of any person, who, within the twelve calendar months preceding, shall have received aid as a pauper under any poor law of this Province, or aid as a poor person from any public grant of Government money.

Election of Members of the House of Assembly.

R. S. N. S., CH. 4 (5TH SERIES.)

64. No elector shall be permitted to vote in more than one polling district or division in this Province on the same day.

Elector to vote in only one polling district.

65. No elector having at any election a right to vote in the County in which at the teste of the writ he resided, shall be permitted to vote in any other County.

County in which elector shall vote.

66. In any such election, non-resident electors having a qualification in more than one polling district, may, at their option, vote in either; and any such non-resident elector, before he shall be permitted to vote, shall, if required by the Presiding Officer, candidate, or his agent, or an elector, take, in addition to the oaths hereafter prescribed, the oath following:

Option of non-resident electors.

"I, A. B., do swear that at the teste of the writ for this election I resided at _____, in polling district number _____, in the County of _____. That I am not qualified to vote in the said County, and I have not this day voted in any other polling district or polling division in this Province."

Form of oath of non-resident elector.

67. It shall not be lawful for any person to vote at any election for a member or members to represent the people in the General Assembly of this Province, who at any time within fifteen days before the day of election, was an *employee*, or in the receipt of wages or emolument of any kind as such *employee*, in the Post Office, the Custom House, the Inland Revenue Department, the Lighthouse Service, on the Government railroads, in the Crown Land Office, or the Local Public Works and Mines; but nothing in this section contained shall be construed to extend to any elector who may have contracted to furnish materials of any kind for the Government railroads, or to perform any other specific contract in respect of the same, or to any person who may have been employed by the day temporarily to repair the railroads; or to any postmaster, post-office keeper, way-office keeper, or mail courier under the Post Office.

Certain official persons disqualified.

NEW BRUNSWICK PROVINCIAL FRANCHISE.

Elections to the General Assembly.

CON. STATS. N. B. CH. 4, (1877).

- Qualification of voters.** 1. Every male person of the age of twenty-one years or upwards, being a British subject, not subject to any legal incapacity, who shall have been assessed for the year for which the registry is made up, in respect of real estate to the amount of one hundred dollars, or personal property, or personal and real amounting together to four hundred dollars, or four hundred dollars annual income, shall be qualified to vote for Representatives of the county or city for which he shall be so assessed; if there be no assessment for the parish in any year, then the possession of the qualification shall of itself be sufficient.
- To be assessed for real or personal property, or both; or income.**

Rates and Taxes.

CON. STATS. N. B. CH. 100. (1877)

- Real estate to be rated** 16. Real estate held in trust shall be rated in the name of the trustee; and the real estate held as the separate property of a married woman shall be rated in the name of her husband, unless she is living separate and apart from her husband, in which case it shall be rated in her own name; and real estate which the assessors cannot obtain the name of any of the owners shall be rated in the name of the occupier, or person having ostensible control, but under such description as to persons and property in the cases herein referred to, except in that of the separate property of a married woman, as shall be sufficient to indicate the property assessed, and the character in which the person is assessed.
- Trustee.**
- Married woman in name of her husband.**
- Occupier.**
- Infant's real estate in name of guardian.** 17. Real estate belonging to an infant shall be assessed either in his own name, or in that of his parent or guardian, or the person ostensibly exercising control over it, and under such description as shall indicate the property and capacity of the person assessed.

MANITOBA PROVINCIAL FRANCHISE.

An Act respecting the Legislative Assembly and the Representation of the People therein.

CON. STATS. MAN., CH. 3, (1880).

1. This Act shall be known and cited as "The Act respecting the Title of the Legislative Assembly."

3. In interpreting this Act, unless it be otherwise provided, or unless there be in the context something which indicates a different sense, or requires another construction :

(2) The word "owner" signifies proprietor in his own right ;

Owner.

(3) The word "occupant" signifies the person who occupies immoveable property otherwise than as owner, but who enjoys the revenues and profits arising therefrom ;

Occupant.

(4) The word "tenant" means as well the person who pays rent in money, as the person who is obliged to give to the owner a certain part of the revenues and profits of the real estate which he occupies.

Tenant.

(5.) The words "electoral division" mean any place or portion of this Province entitled to return a member of the Legislative Assembly.

Electoral division.

QUALIFICATION OF ELECTORS.

Conditions Requisite to be an Elector.

61. No person shall be admitted to vote at the election of a member of the Legislative Assembly of this Province, unless his name appears at the time of the voting on the list of electors then in force ; and no person shall be entered upon the list of electors for any electoral division unless he fulfils the following conditions, that is to say :

Voters to be on list of voters.

Males. (1). He must be of the male sex, twenty-one years of age, and a
Full age. subject of Her Majesty by birth or naturalization ;
Subject of
Her Majesty.
Not incapacitated. (2). He must not otherwise be legally incapacitated ;
And for three months be,— (3). He must have been in such electoral division for a period of at least three months, actually and in good faith, owner of real estate of the value of one hundred dollars or upwards ; or tenant for the year, or by the year, of real property of the value of two hundred dollars and upwards, under an annual rent of at least twenty dollars, Or occupant, or the occupant and *bona fide* householder, by the residence of himself, or of himself and family, if he have any, on land in the In electoral division, electoral division of the annual value of at least twenty dollars. 38 V. c. 2, s. 8.

Co-owner or co-tenant to vote if share of each is sufficient. 62. Whenever two or more persons are co-owners, or co-tenants, or co-occupants of any real estate valued at an amount sufficient for the share of each to confer upon him the right to vote, each of such persons shall be deemed to be an elector under this Act, and shall be entered upon the list of electors ; but he whose share does not amount to the value required to confer the vote, if any be in such position, shall not be so entered nor be an elector ; and the same rule shall apply to co-tenants respecting the amount of rent which Share in rent. they may jointly and severally pay. 38 V. c. 2, s. 10.

No member of a corporation to vote. 63. Nevertheless if the real estate is owned or occupied by a corporation no one of the members shall be an elector, nor entered upon the list of electors by virtue thereof. 38 V. c. 2 s. 10.

All persons so qualified and on voters' lists to vote. 64. All persons answering the conditions aforesaid, and whose names, under the provisions of this Act, shall appear and be contained on the said revised electoral lists, and who are not otherwise disqualified according to law, shall be entitled to vote at elections of members to serve in the Legislative Assembly of Manitoba. 35 V. c. 5 s. 1.

Persons who cannot be Electors.

Disqualifications. 65. The following persons can in no case be electors or vote :—

Judges. (1) The Judges of the Court of Queen's Bench, and of the County Courts, and the Recorders of cities ;

(2) Clerks of the Crown and Peace, Registrars, Sheriffs, Deputy Clerks of Sheriffs, and Clerks of the County Court. Clerks of
Crown and
other officers

(3) Indians, or persons of Indian blood, receiving an annuity from the Crown, so long as said Indians, or persons of Indian blood, receive such annuity: and if any of the persons set forth in this section vote he shall be liable to a penalty not exceeding five hundred dollars, or to imprisonment for a period not exceeding twelve months in default of the payment of the penalty imposed, and his vote shall be null and void. 38 V. c. 2 s. 11. Indians.

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BRITISH COLUMBIA PROVINCIAL FRANCHISE.

Qualification and Registration of Voters' Act, 1876.

39 VIC. NO. 5 B. C., (1876.)

Repeal of
former Act

1. The "Qualification and Registration of Voters Act, 1875," shall be and is hereby repealed.

Who may
vote at
elections.

2. Every male of the full age of twenty-one years, not being disqualified by this Act, or by any other law in force in this Province, being entitled within this Province to the privileges of a natural-born British subject, having resided in this Province for twelve months, and in the Electoral District in which he claims to vote for two months of that period immediately previous to sending in his claim to vote as hereinafter mentioned, and being duly registered under the provisions of this Act, shall be entitled to vote at the election of a member or members of the Legislative Assembly: Provided that no person shall be entitled to be registered as aforesaid, who shall have been convicted of any treason, felony, or other infamous offence unless he shall have received a free or conditional pardon for such offence, or have undergone the sentence passed upon him for such offence.

Proviso.

Who shall
not vote at
elections.

4. No Judge of the Supreme Court or of the County Courts, no Stipendiary Magistrate, no Constable or Police Officer or Returning Officer, except in cases to be hereafter provided shall be entitled to vote at any election of a member of the Legislature. See *post*.

Only those
registered to
vote.

11. Any person whose name is not upon the register of voters as aforesaid, shall not be entitled to vote at any election for a member or members to serve in the Legislative Assembly.

14. Any person whose name shall be on the register of voters for any electoral district, or [polling division thereof, may vote at any election for a member to serve in the Legislative Assembly for such district in any one (but no other) polling division of such electoral district; and, at any general election, no person shall be entitled to vote in more than one electoral district: and any person contravening any of the provisions of this section shall be liable to a penalty not exceeding fifty dollars, to be recovered in a summary way before any Justice of the Peace, and in default of payment thereof shall be imprisoned for any period not exceeding one month.

15. Any person whose name is on the register of voters of two or more electoral districts, who shall permit his name to remain on more than one register, shall have no right to vote at any election of a member to serve in the Legislative Assembly; and if such person shall vote while his name remains on the register of more than one electoral district, he shall be liable to a penalty of fifty dollars, to be recovered in a summary way before any Justice of the Peace, and in default of payment thereof shall be imprisoned for any term not exceeding one month.

An Act to amend the "Qualification and Registration of Voters' Act, 1876."

42 VIC. CH. 22, B. C. (1878).

2. Section 4 of the "Qualification and Registration of Voters' Act, 39 V., No. 5, 1876," is hereby amended by inserting after the word "Legislature," amended, at the end of the said section, the following:

"Nor shall any Judge of the Supreme Court, or of a County Court, Judges and or Stipendiary Magistrate, Police Magistrate, Sheriff, Constable, or various officers disqualified, Police Officer, or any officer of Customs of the Dominion of Canada, or any officer employed in the collection of duties in the nature of Excise, or any officer holding a Dominion office to which an annual salary is attached (except employees of the postal department), or any officer receiving an annual salary from the Provincial Government, or Public School Teacher employed by the Provincial Government, be entitled to have his name placed on any register of voters, unless he shall have resigned his office prior to sending in his claim to vote; and should the name of any such Judge of the Supreme

Court, or of any County Court, Stipendiary Magistrate, Police Magistrate, Sheriff, Constable, or Police Officer, or any officer of the Customs of the Dominion of Canada, or any officer employed in the collection of duties in the nature of Excise, or any officer holding a Dominion office to which an annual salary is attached (except employes of the Postal Department), or any officer receiving an annual salary from the Provincial Government, or Public School Teacher employed by the Provincial Government, now or hereafter appear on any register of voters in contravention of the provisions of this section, the Collector of Voters of the electoral district or polling division on whose list of voters any such name appears, shall erase the same:

Name of such officers so be erased from list.

Proviso. Provided that this section shall not apply to any member of the Executive Council of this Province."

An Act relating to an Act to make Better Provision for the Qualification and Registration of Voters.

38 VIC. NO. 2, B. C. (1875).

Chinamen and Indians disqualified. No Chinaman or Indian shall have his name placed on the register of voters for any electoral district, or be entitled to vote at any election of a member to serve in the Legislative Assembly of this Province. Any collector of any electoral district or polling division thereof, who shall insert the name of any Chinaman or Indian in any such register, shall, upon conviction thereof before any Justice of the Peace, be liable to be punished by a fine not exceeding fifty dollars, or to be imprisoned for any period not exceeding one month.

Collector inserting any such on register to be punished.

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PRINCE EDWARD ISLAND PROVINCIAL FRANCHISE.

An Act to repeal certain parts of the Act consolidating the Election Laws, and to make other provisions in lieu thereof.

24 VIC., CH 34, (a), P. E. I. (1861).

Provision
Voters.

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13. Every male person of the age of twenty-one years and upwards, being a British subject, and not subject to any legal incapacity, and who shall be also qualified by any one or more of the several qualifications hereinafter next enumerated, shall be entitled to vote at any election hereafter to be held for the election of a member or members to represent in the General Assembly of this Island, the town, common, and royalty, or electoral district, wherein his property qualification shall be situate, or being otherwise qualified by this section, wherein he shall have resided twelve calendar months next before the *teste* of the writ for said election; that is to say:

Qualifications:
Males.
Of age.
British subjects.
If qualified as herein-after enumerated.
Where property situate
Or where resident twelve months.

First.—Every such male person shall be entitled to vote as aforesaid for any town, and the common and royalty thereof, save and except the town and royalty of Princetown, who shall own or be entitled to a freehold estate of and in one whole water lot, common lot, or pasture lot, situate within such town, or the common or royalty thereof; or who shall own or be entitled to a freehold estate of and in every dwelling-house, warehouse, shop or other building, or any farm or piece of land within any town, common or royalty, in this Island, save and except as aforesaid, of the clear yearly value of forty shillings.

Persons owning freehold in certain lots.

Or owning freehold in houses, shops, or farms, &c.
Of yearly value of 40s.

(a) The 13th, 15th, and 22nd sections of this Act were repealed by 41 Vic., ch. 14., s. 3 (1878); but on the first session of the next Legislature, held in the following year (1879), they were revived by 42 Vic., ch. 2, s. 3, "as if the same had never been repealed."

Persons occupying houses, shops, or farms, &c.

Secondly.—Every such male person shall be entitled to vote aforesaid, for any town, and the common and royalty thereof, save and except the town and royalty of Princetown, who shall be in the *bona fide* use and occupation, or actual possession of any dwelling-house, warehouse, shop, or other building, or any farm or piece of land within any town, common or royalty in this Island, save and except as aforesaid, of the clear yearly value of forty shillings.

Of yearly value of 40s.

Must be owners or occupant for twelve months prior to writ of election.

Provided every person claiming to vote under either of the foregoing property qualifications, shall have owned or possessed, or been in the use and occupation of the same for the space of twelve calendar months previous to the *teste* of the writ for holding the election.

Persons owning freehold or occupying houses, shops, or farms, &c.

Thirdly.—Every such male person shall be entitled to vote as aforesaid for any electoral district who shall own or be entitled to a freehold estate, or who shall be in the *bona fide* use and occupation or actual possession of and in any dwelling-house, warehouse, shop, or other building, or any farm or piece of land within such electoral district of the clear yearly value of forty shillings.

Of yearly value of 40s.

Persons performing statute labor.

Fourthly.—Every such male person shall be entitled to vote as aforesaid for any town, common and royalty, or for any electoral district who, being liable to perform statute labor on the public roads, shall have actually performed the same, or shall have commuted his said statute labor for money, and duly paid the same, or who being otherwise so liable shall be specially exempted therefrom by statute, on account of holding any office, situation or employment: Provided always, that every person claiming to vote by virtue of his statute labor qualification, shall have resided in the polling division in which he shall claim to vote twelve calendar months next before the *teste* of the aforesaid writ of election, and shall produce to the returning officer, if required so to do by him, or any opposing candidate, or the representative of any opposing candidate, a receipt or certificate in writing subscribed with the name of the overseer of statute labor, or collector of city taxes for the precinct wherein such person claiming to vote shall have resided for twelve months as aforesaid, testifying to the effect that such person hath duly performed all such statute labor, or paid all such commutation money as by law he became liable to pay or perform at any time within twelve months next before the *teste* of the said writ of election.

Unless exempted by virtue of office.

Must reside in voting division twelve months prior to writ of election.

Produce receipt or certificate to Returning Officer.

Contents of such certificate.

14. When the premises constituting a property qualification shall be owned or occupied by joint tenants, or occupants, tenants in common, co-parceners, or co-partners in trade, then not more than one of either of such description of persons respectively shall vote therein, unless their individual interest therein shall be of the yearly value of forty shillings.

Joint tenant to vote if his individual interest equals 40s. yearly.

15. And, whereas, there are many persons who are in possession of and entitled to leasehold estate in valuable improved farms, and other pieces of land, the annual rent whereof doth not in the whole amount to forty shillings, and unless otherwise provided for, it might happen that the amount of rent payable by them in such cases, notwithstanding the increased value of the estates in their possession by improvement and buildings made and erected thereon, would not entitle them to the right of voting;—therefore, every person who shall be in possession of, or entitled to a leasehold estate in and to a farm or other piece of land which with buildings and improvements thereon would be of the fee simple of thirty-five pounds, whether the annual rent reserved or payable therefor, shall or shall not amount to forty shillings, shall at any election hereafter to be holden, be entered to vote for a member or members to serve in the General Assembly for the town, common and royalty, or electoral district wherein the same may be situate. Provided always that every such person shall, in other respects, be qualified as required by this Act.

Person entitled to leasehold in lands worth with improvements £35 to vote although yearly rent is less than 40s.

Must be otherwise qualified.

19. Every elector qualified to vote for the town or electoral district in which he resides shall vote at any election in such town or district in the polling division in which he resides, and not elsewhere; and the oath of qualification to be administered to and taken by every such resident elector, when required, shall be the oath in the schedule (A) to this Act annexed, applicable to the nature of his qualification. (b)

Resident elector to vote in division where he resides.

20. Every elector qualified to vote in any town or electoral district in which he does not reside, shall vote in the polling division in which the property on which he claims to vote for such town and

Non-resident elector to vote in division where his property is situate.

(b) The oath (A) requires the voter to verify his qualification, and adds: "That you have not polled or given a vote for any candidate within this or any other polling division."

royalty or electoral district is situate, and not otherwise ; and the oath of qualification to be administered and taken by every such non-resident elector in this section mentioned, when required, as herein provided, shall be the oath contained in the schedule (B) to this Act annexed. (c)

How the values in ss. 13, 14 and 16 are to be estimated.

22. The clear yearly value in the thirteenth, fourteenth, and sixteenth sections of this Act mentioned, shall be estimated by the value of agricultural or other produce which the land or property actually yields, or by the annual value of the buildings thereon erected.

An Act to Increase the Number of Members to serve in the General Assembly, and to Consolidate and Amend the Laws Relating to Elections.

19 VIC. CH. 21, P. E. I. (1856.)

Voters on Cardigan Point.

20. "All persons who for a period of twelve months before the *teste* of the writ of election shall have been the occupiers of at least eight acres of reserved lands, called Cardigan Point, marked in the original plan of this Island as part of the Royalty of Georgetown, shall be as heretofore, and they are hereby declared to be entitled to vote as electors of said town and royalty. (d)

Premises owned or occupied in immediate succession in different polling divisions.

22. The piece of land, lot, warehouse, shop, or other building or premises, in respect of the ownership, possession or use and occupation of which any person shall be entitled to vote at an election for any town, common and royalty, or electoral district, of which the same may form part within this Island as aforesaid, may be different premises owned or occupied in immediate succession, by such

(c) The oath (B) requires the voter to verify his qualification, and adds : "That you have not polled or given a vote for any candidate at this election, either in this polling division, or in any other polling division, in this town and royalty or district, as the case may be, and that the place of your abode is not within this electoral district." The Act 29 Vic. c. 10 (1866), revived by 42 Vic. c. 2, s. 4, allows electors to poll all their votes in the electoral district where their property qualification is situate.

(d) This section was repealed in 1878, by 41 Vic. c. 14, s. 3, but was revived and re-enacted the following session by 42 Vic. c. 2, s. 5.

person, whether situate in the same polling division or not, during the space of twelve months, next previous to the date of the writ of election.

29. Every mortgagor or *cestui qui trust*, in actual possession by himself or his tenant, of land or real estate of the yearly value of forty shillings, notwithstanding such mortgage or trust outstanding; and the husband of every woman who may be seised in dower of any deceased husband, where the dower has been actually set off and reduced into possession, and shall be actually of the clear yearly value of forty shillings, shall be entitled and qualified to vote for any town and royalty, or electoral district in this Island wherever such land may be situate.

Mortgagor and *cestui qui trust* may vote.
Husband of doweress.

Yearly value 40s.

The Public Roads Act, 1879.

42 VIC. CH. 1, P. E. I.

22. Every male person between the ages of eighteen and sixty years, except as hereinafter excepted, shall, when required under the provisions of this Act, either by himself or some sufficient substitute, and provided with such necessary implement or implements as may be directed by the overseer of the precinct, work for the space of two days, or eighteen hours. (e)

Male persons between 18 and 60, to perform statute labor.
Two days, or 18 hours.

25. The following persons shall be exempt from statute labor, or the payment of commutation money under this Act, namely:

Persons exempt from statute labor.
Persons under six months on Island.
Clergymen.
Teachers.

(1) Persons residing in the Island for less than six months before the appointment of the overseer.

(2) Clergymen.

(3) Licensed school teachers under engagement.

(4) Persons over sixty years of age. But the horse or horses of all such persons herein exempted (except clergymen), who have residing with them or in their employ within their precinct, any person liable to perform statute labor under this Act shall be liable in the same manner as the horse or horses are made liable under section twenty-three, and shall also be liable for breaking the roads in the winter season as hereinafter provided.

Persons over 60 years of age.
Exceptions.

(e) By s. 27, all persons liable to perform statute labour may commute by a money payment for themselves and their horses.

RESOLUTIONS OF THE ONTARIO REVISING OFFICERS.

[Passed at a meeting held in Toronto 9th November, 1885.]

Upon section 15 of the Franchise Act the following resolutions were adopted to regulate the action of the Revising Officers in their action thereunder :

1. That in the organized districts no name shall be added to the Preliminary List which does not appear in the last Revised Assessment Roll, or last revised list of voters, unless an application is made in writing by the person desiring to be added, or by some one on his behalf, disclosing grounds which would *prima facie* entitle him to be put on the Preliminary Voters' List ; and the said application be filed with the Revising Officer.

2. That the Revising Officer in receiving the application mentioned in the next preceding resolution, shall only act upon the same when it is supported by a statutory declaration, or such other evidence as may reasonably satisfy the mind of such Revising Officer.

3. That in Indian Reserves, the Revising Officer describe the voter's property on which he votes, as the part of the Indian Reserve named, occupied and possessed by the said voter, or such better description as he can give.

Upon sections 19 and 20, as to the practice which should prevail on the Revision of the Preliminary Voters' List, the following resolution was adopted :

4. Under sections 19 and 20, it would appear that evidence cannot be heard to support objections to strike names off the Preliminary List of Voters ; but to settle all doubts on the question, it is resolved, that, as a matter of practice, it is advisable that in making the Preliminary Revision of the Voters' Lists under the Franchise Act, the Revising Officer should not take any evidence in support of applications to strike the names off the list. But that all such investigation should be deferred to the Final Revision, such a practice being calculated to save time and expense to the parties interested.

Upon section 21, the following was adopted :

5. That in the case of a ward in a city or town containing less than 300 voters, though more than 200, such ward should not be subdivided into Polling Districts.

6. It was the unanimous opinion that at the Final Revision of the list, a court need not be held in each municipality to consider objections ; and that it is not necessary to hold such court in each polling district.

RESOLUTIONS OF THE QUEBEC REVISING OFFICERS.

[Passed at a meeting held in Quebec, 14th January, 1886.]

(Translation).

Proceeding to the examination of the Act, the meeting is of the opinion—

1. That where they are not otherwise qualified, the *Cures* (a) may be put upon the roll as usufructuaries (*usufructiers*), and the school masters, the vestry-men and station masters of railways, as occupants.

2. That in the organized districts, no name be entered on the Preliminary List if it be not found on the last Assessment or Valuation Roll, or on the last revised electoral lists ; unless application is made in writing by one who wishes to enter his name on the list, or by some one for him, setting forth the reasons which give him the right to have his name placed on the Preliminary List ; and that the said application be sent to the Revisor.

3. That the Revisor on receiving the above mentioned application, do take it into consideration only when it is accompanied by a solemn declaration and by documents or proofs judged satisfactory by him.

4. That the Revisor enter on the lists the names of all persons having the electoral qualification, even when at the time of the completion of the list, they may become disqualified to vote.

5. That in virtue of section 16, a copy of the Voters' List be published and that two copies of it be sent by post to each of the officers named in the said section. That a copy of this interpretation be sent to the Secretary of State for the opinion of the Law Officers ; and that this resolution be the rule of conduct of the Revisors if the Secretary of State does not send contrary instructions.

6. That for the Preliminary Revision, the Revisor may sit only within the electoral district for which he is nominated.

7. That for the Final Revision it is not necessary for the Revisor to sit in each of the polling districts ; but only in each municipality.

(a) See notes (y), p. 84, and (y) p. 94, *ante*.



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